Supreme Court, U.S.
FILED

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No.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

WALTER SAVOY,

Petitioner,

v.

CASCADE COUNTY SHERIFF'S DEPARTMENT AND UNITED STATES OF AMERICA, by and through the FARMERS HOME ADMINISTRATION, its agency,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE MONTANA SUPREME COURT

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108 pp

QUESTION PRESENTED

Did the Farmers Home Administration deprive Petitioner Savoy of property without due process of law, in violation of Petitioner's constitutional rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, where Petitioner, Savoy had a possessory interest in the real property, and where Farmers Home Administration did not comply with the statutory requirements for redemption found in M.C.A. §25-13-802, M.C.A. §25-13-806 and M.C.A. §25-13-807.

Did the Cascade County Sheriff's Department deprive Petitioner Savoy of property without due process of law, in violation of Petitioner's constitutional rights under the Fifth and Fourteenth Amendments to the Constitution of the United States, where the Sheriff's Office refused to provide a deed to Petitioner and allowed FmHA to redeem the real property without complying with the statutory requirements for redemption?

Did the lower courts overstep their bounds by failing to follow the redemption statutes and provide a political solution to a legal question?

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No. 95-

IN THE

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OCTOBER TERM, 1994

WALTER SAVOY,

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v.

CASCADE COUNTY SHERIFF'S DEPARTMENT AND UNITED STATES OF AMERICA, by and through the FARMERS HOME ADMINISTRATION, its agency,

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OPINION BELOW

The opinion of the Montana Supreme Court is reported at 887 P.2d 160 (1994).

JURISDICTION

The Supreme Court of the United States has jurisdiction over this matter pursuant to 28 U.S.C. §1257(a). The Order denying a rehearing issued by the Montana Supreme Court was entered January 18, 1995.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fifth and Fourteenth Amendments to the Constitution of the United States of America are attached hereto as Item numbers 4 and 5, respectively, of the Appendix.

M.C.A. §25-13-801, et seq. is attached hereto as Item number 6 of the Appendix.

M.C.A. §1-2-101 and 102 is attached hereto as Item number 7 of the Appendix.

STATEMENT OF THE CASE.

Mr. Savoy brought this action in the District Court originally as a Writ of Mandamus and a declaratory judgment action. Mr. Savoy sought the Court's

order mandating that the Sheriff's Office issue him a final Sheriff's Deed on property he had purchased on May 23, 1989. A hearing was held in December of 1990 on the Writ of Mandamus and Judge McCarvel ruled that the Deed be issued by the Sheriff's Department to Farmers Home Administration as Farmers Home Administration had substantially complied with the redemption statutes. Mr. Savoy then sought additional discovery and deposed numerous witnesses and performed other discovery. The Defendants, on the other hand, pursued no discovery avenues. Regardless, a hearing was held on the Summary Judgment Motions on November 29, 1993, and the State Court issued its Order dated December 16, 1993, granting summary judgment to Farmers Home Administration and the Cascade County Sheriff's Department.

FEDERAL QUESTION, WHEN RAISED

Petitioner alleged violation of his constitutional rights against the taking of his property without due process in his initial complaint and argued the same in his briefs to the court during the summary judgment proceedings.

Petitioner appealed to the Supreme Court of the State of Montana and again argued that Petitioner's constitutional right's to due process was violated. The Supreme Court did not address the constitutional issue and in a four-three decision affirmed the lower court's holding on summary judgment. Petitioner requested a reconsideration again asserting a violation of his constitutional rights. The rehearing was denied.

STATEMENT OF THE FACTS

A real estate foreclosure action was initiated by Interstate Production Credit Association and concluded against Hugh and Rita Sands, the Federal Land Bank of Spokane, the United States of America (FmHA), and the First National Bank of Fairfield. The Federal Land Bank of Spokane cross-complained against the other defendants. A Judgment and Decree of Foreclosure was entered on the Complaint and Cross-Complaint. A foreclosure sale occurred on May 23, 1989, where Petitioner, Savoy, purchased two parcels of property, the first for $3,001.00 and the second for $85,000.00. Petitioner Savoy obtained a Certificate

of Sale for his purchased property on May 24, 1989.

By letter dated May 17, 1990, FmHA delivered to the Sheriff's Office on May 21, 1990, a purported Notice of Redemption and a check in the amount of $90,030.14 to the Cascade County Sheriff's Department (Sheriff). A letter was sent to Petitioner Savoy notifying him of the attempt to redeem. FmHA did not file the Notice of Redemption with the Clerk and Recorder's Office pursuant to M.C.A. §25-13-806. FmHA failed to produce to Petitioner and further failed to serve on the Sheriff a mortgage, lien, or note of record certified by the county clerk as required by M.C.A. §25-13-807(1). FmHA failed to file an affidavit stating that it still had an unsatisfied lien as required by M.C.A. §25-13-807(3). FmHA failed to set forth a proper legal description in the Notice of Redemption as required by M.C.A. §25-13-807 and actually attempted to redeem both parcels for the price of one by referring to the parcel as Tract II when their legal description encompassed both tracts. FmHA failed to set forth in the Notice of Redemption the amount of any outstanding lien held by FmHA as required by M.C.A.

§25-13-803, 804. FmHA, also failed to tender the correct amount of money for the property described in the notice.

Petitioner Savoy later met with officers from the Sheriff's Office and was told to obtain an attorney to advise him concerning his rights to the property. On June 8, 1990, Petitioner's attorney, Gary Deschenes, notified the Sheriff's Office in writing that the attempted redemption did not comply with the relevant statute, M.C.A. §25-13-807. Mr. Deschenes specifically directed the Sheriff to issue deeds to Petitioner for the purchased property. The deeds were not issued.

Petitioner Savoy filed his declaratory action and sought a Writ of Mandamus directing the Sheriff to issue the deeds to Petitioner for the parcel claimed by FmHA.

A hearing on the Writ of Mandamus was held on December 4, 1990. The trial court held that FmHA had mostly fulfilled the intent of the statute and denied the Writ of Mandamus. The Court ordered the Sheriff to issue a deed to FmHA for "Tract II" which was done in January,

1991. The Sheriff's Office issued a deed that was contrary to the proper legal description contained in Federal Land Bank's judgment and also contrary to FmHA's description in their "notice". The description contained property that was not in FmHA's original mortgage and contained state leases and appurtenances not claimed by FmHA. The Sheriff issued two (2) deeds to the same property without determining who was entitled to that particular parcel. As the Deeds stand today, both FmHA and Pat Sands (from an assignment) have deeds to the same parcel or property. The Sheriff's deed to FmHA failed to exclude the parcel of property also redeemed by Pat Sands which FmHA never had a mortgage on at any time.

Petitioner filed his Motion for Summary Judgment in July of 1993. In his response to the United States of America's Motion for Summary Judgment dated August 26, 1993, Petitioner, Savoy, asserted that a failure to follow the state statute by FmHA and the Sheriff resulted in an unconstitutional taking of property. (Plaintiff's Memorandum in Opposition to United States of America's Motion for Summary Judgment, page 4)

The trial court heard arguments on November 29, 1993, where Petitioner Savoy again asserted his argument that failure to follow the statute resulted in an unconstitutional taking of his property. (Hearing transcript page 19). The trial court awarded summary judgment to Cascade County Sheriff's Department and FmHA on December 16, 1993. The trial court did not address Petitioner's constitutional arguments.

Petitioner appealed to the Montana Supreme Court on April 8, 1994. In his brief to the Supreme Court of the State of Montana, dated May 27, 1994, Petitioner, Savoy, again asserted that the failure of FmHA and the Sheriff to follow the applicable statutes had resulted in a taking of property without due process of law in violation of Petitioner Savoy's constitutional rights. (Appellant's Opening Brief, Page 27) The Supreme Court issued its four/three split decision on December 13, 1994, in favor of the Sheriff and FmHA and against Petitioner Savoy.

Petitioner timely requested reconsideration of the decision of the Supreme Court of the State of Montana.

An Order denying reconsideration was entered on January 18, 1995, this Petition for Certiorari followed.

ARGUMENT

INTRODUCTION

The Montana redemption statutes M.C.A. §25-13-801, et seq. contain mandatory provisions whereby a proper party can use government authority to reclaim property sold to another party. The right to redeem real property is strictly a statutory right. Specific notice requirements are contained in the statutes so that all persons with an interest in the property are informed of the redemption and its affect. Where redemption is allowed without following the dictates of the statutes, adequate notice has not occurred. Under the current statutory scheme, there is no provision which would provide a purchaser an opportunity for a prior hearing when redemption is allowed with less than full compliance with the notice statutes.

If the current holding in this case is allowed to stand, citizens could be deprived of their property with little or

no notice and absolutely no opportunity to object prior to the taking of their property. The United States Supreme Court should protect the constitutional rights of future Montana citizens by overruling the Montana State Supreme Court and applying a strict interpretation of the notice statutes in this case.

DISCUSSION

A. Petitioner Savoy had a Protected Property Interest.

There can be no dispute that Petitioner, Savoy, had a protected interest in property. He paid $85,000.00 for one tract and $3,001.00 for the other at the foreclosure sale and received a receipt showing his right as a purchaser attached as Item number 8 to the Appendix. The Sheriff's Deed to Savoy dictated that only by following the redemption statutes could the property be taken from the Petitioner. This was not done.

B. Savoy's Entitlement to Due Process.

Where a person has a protected property interest, that interest cannot be taken from him by governmental actions without due process as guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution. Due process generally requires adequate notice and some kind of hearing prior to deprivation of a significant property interest. Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1 (1978).

C. **Redemption is a Statutory Taking.**

The redemption statutes are provided so that anyone who has a recorded and valid financial interest in a particular parcel of property can protect that interest. It is without question that the principals of due process and equal protection under the law should and do apply to this type of taking.

D. **Statutory Notice Requirements for a Redemption in Montana.**

There are seven (7) statutory mandates for providing adequate and effective notice of an attempted redemption. They are as follows:

1. "Written notice of redemption must be given to the sheriff" ... M.C.A. §25-13-806.

2. And a duplicate filed with the County Clerk and Recorder's office, ..." M.C.A. §25-13-806.

3. "A redemptioner must produce to the officer or person from whom he seeks to redeem, and served with his notice to the sheriff: (1) a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed; or if he redeems upon a mortgage or other lien, a note of the record thereof, certified by the county clerk; or if upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court." M.C.A. §25-13-807(1).

4. A redemptioner must also pay the purchaser the appropriate amount of money as calculated under the provisions of M.C.A. §25-13-802.

5. "A redemptioner must produce, to the officer or person from whom he seeks

to redeem, and served with his notice to the sheriff: (3) an affidavit of himself or his agent showing the amount then actually due upon the lien." M.C.A. §25-13-807(3).

6. A redemptioner must set forth a proper legal description in the Notice of Redemption pursuant to M.C.A. §25-13-807.

7. A redemptioner must set forth in the Notice of Redemption, the amount of any outstanding liens so that any subsequent redemptioner would have the ability to redeem pursuant to M.C.A. §25-13-803 and 804.

E. FmHA Failed to Comply with the Statutory Mandates.

1. Issue a notice to the sheriff.

FmHA did issue a notice to the sheriff, however as more fully discussed below, the notice was not sufficient to meet the statutory requirements for a redemption.

2. File the notice with the clerk and recorder's office.

It is undisputed that FmHA failed to file any type of notice with the clerk and recorder's office. FmHA was unable to produce any evidence of a filing with the clerk and recorder's office. The deputy clerk and recorder made a search of the record and testified that no filing was made by Farmers Home. (See December 4, 1990, hearing transcript, page 42-43).

Filing the notice with the clerk and recorder's office is a necessary part of the notice statute because the clerk and recorder's office is the place where the public can go to learn of interests in any real property located within that county. Failing to file the notice with the clerk and recorder's office resulted in hiding the attempted redemption from any and all persons who might constitute subsequent redeemers.

3. Serve a copy of the docket of judgment, mortgage, or lien certified by the county clerk to the person from whom they seek to redeem and the Sheriff.

This is probably the most important requirement in the whole redemption process. The mandated requirement allows

the purchaser and sheriff to verify that the redeemer is in fact a proper party to attempt the redemption. FmHA did not provide Petitioner Savoy or the Sheriff with any document which would fit this requirement. FmHA did not have a judgment in its favor from any court. FmHA provided a copy of the original judgment decree of foreclosure issued in favor of Interstate Production Credit Association and the Federal Land Bank of Spokane. The judgment was satisfied by the foreclosure sale where Petitioner Savoy purchased this property. The Decree specifically sets forth on page 5 that FmHA, Farmers Home, was <u>not</u> receiving a judgment because it had not made claim against the Sands, who were the former owners and debtors in the foreclosure action. FmHA did not claim that it had acquired the interest of either of the two judgment creditors and presented no evidence that it had acquired any such interest. It is amazing that FmHA would claim an interest to the real property based upon a judgment rendered in favor of someone else. It is even more amazing that the Sheriff's Department and the state courts allowed FmHA to perfect a redemption based upon FmHA's nonexistent judgment.

FmHA did not attempt to serve a copy of a lien or a mortgage on Petitioner or the Sheriff. Clearly, FmHA did not meet the statutory requirements. Furthermore, no such document, adequate or inadequate, was ever provided to Petitioner, Savoy.

4. Payment of proper funds.

The legal description given in the notice included two parcels. The monies presented to the Sheriff's office was sufficient for only one. FmHA has admitted that the legal description contained both tracts (Meredith deposition, page 41, 11. 8-25) and that there was not enough money presented to redeem both parcels. (Meredith deposition, page 42, 11. 6-10). As stated above, recording of the notice could not have occurred merely by listing the property as "Tract II". The clerk and recorder's office would only record the notice by and from the legal description. Therefore, for the purposes of the attempted redemption, the legal description contained in the notice must be the identifying factor. Clearly, FmHA did not tender sufficient funds to acquire the property described in the notice pursuant to M.C.A. §25-13-802.

5. Produce an affidavit showing the amount currently due.

This is the next most important statutory mandate in the redemption process. This requirement allows the Sheriff and petitioner to verify that a party who might be a redeemer is in fact still owed money and qualifies as an unsatisfied lien holder. FmHA failed to file an affidavit showing the amount currently due if any. FmHA failed to produce to the Sheriff or Savoy any information which would give either of them notice of an outstanding lien by Farmers Home. FmHA had filed an affidavit in a previous proceeding in 1989 regarding the amounts owed at that time, but FmHA admitted a person could not tell how much FmHA was owed, if anything in 1990, when they attempted to redeem. (Meredith deposition, page 35, 11. 2-3).

Unless a redeemer proves that it is currently an unsatisfied lien holder a creditor could, and in this circumstance may have, received full payment of its lien amount and then been allowed to redeem the property also. This affidavit is the only way for the Sheriff's

department and the purchaser to verify that a creditor does not receive full payment and the property as well.

6. Set forth a proper legal description in the Notice of Redemption pursuant to M.C.A. §25-13-807.

Interested parties need to know what is being redeemed, especially in this case where there were three separate parcels. The Federal Land Bank decree sets forth the proper legal description on Exhibit 1 of its Judgment and Decree of Foreclosure. As testified to by Savoy, shown by the exhibits, and undisputed by the Defendants, Farmers Home's Notice of Redemption gave an improper legal description as to the subject property in two ways. First, the legal description as given by the Farmers Home, encompasses property known as "Tract I". It can be easily seen that Farmers Home was attempting to redeem both Tracts for the price of one. Secondly, the legal description left off Lot 4 of Section 36 as well as the water rights, state leases, and other appurtenances set forth in the last three paragraphs of the proper legal description which was what Savoy

purchased and received. This lack of proper legal description prejudices Savoy and the Sheriff as they were unable to properly determine what property was attempting to be redeemed by Farmers Home and whether the proper amount had been remitted pursuant to M.C.A. §25-13-802.

7. Set forth in the Notice of Redemption the amount of any outstanding lien held by the Farmers Home so that any subsequent redemptioner had the ability to redeem pursuant to M.C.A. §25-13-803 and 804.

A junior redemptioner must pay the senior lienholder's outstanding lien. See M.C.A. 25-13-803 & 804. FmHA presented no documents that would let a junior redemptioner know what that amount would be. None of the documents produced to either Savoy or the Sheriff indicate that Farmers Home even had a lien by mortgage at the time of redemption. Further, the requirements set forth in the redemption statutes do not merely address one type of interested party, but are meant to be followed so that all interested parties have adequate notice of all other parties. This was not done in this case. FmHA's own attorney

acknowledged Savoy was a redemptioner. (November 29, 1993 transcript p. 31, ll. 14-20). The information FmHA withheld prevented any subsequent redemptioner from exercising his redemption rights.

FmHA has also argued that Savoy never intended to redeem. That argument begs the question. If FmHA failed to redeem, then Savoy did not have to as he owned the land! The burden is on FmHA to comply, not Savoy to figure out what FmHA should have done.

F. <u>FmHA's Failure to Comply with Statutory Mandates Denied Petitioner Savoy's Right to Due Process</u>.

By redeeming the real property without performing all of the elements mandated by the statutes, FmHA took Petitioner Savoy's property without giving him adequate notice. Petitioner Savoy was not provided with sufficient information by which he could determine whether FmHA was in fact a proper party to redeem, what property or properties FmHA sought to redeem, or how much, if any money was currently owed to FmHA.

The notice by FmHA also failed to provide Petitioner Savoy with an opportunity to be heard prior to the unlawful taking of his property. Since FmHA failed to provide any information which would show that it had a current right to redeem, it was vitally important that Savoy be afforded an opportunity to object and be heard prior to the redemption and the taking. No such hearing was ever offered nor held. Petitioner's only chance to be heard came as a result of his own suit filed after the taking by redemption had already occurred.

G. Substantial Compliance and Due Process.

FmHA has argued that it had substantially complied with the redemption statutes, and, therefore, has properly redeemed. Even if strict compliance with statutory mandates is not required, adequate notice must still be given. Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978). The statutory mandates serve as an indicator of what is adequate under these circumstances. Other courts have

discussed this question in terms of "substantial compliance". The Doctrine of Substantial Compliance provides that a party may redeem property despite minor deviations from the statutory redemption scheme, as long as, the minor deviations do not result in prejudice to the rights of another party. Dupnik v. U.S., 848 F.2d 1476, 1485 (9th Cir. 1988); GESA Fed. Credit Union v. Mutual Life Ins. Co., 713 P.2d 728 (Wash. 1986). As stated previously in this brief, FmHA did not attempt to comply with almost all of the statutory requirements needed to redeem. FmHA attempted to give notice of its attempt to redeem, but the notice was woefully inadequate. FmHA tendered a check, but the amount of the check was not enough to purchase the property by the legal description contained in the notice. FmHA completely failed to provide any evidence that it in fact still held a lien interest in the property at the time it attempted redemption or that it was still even owed money by the Debtor. FmHA's actions constitute major deviations from the redemption statutes, not minor deviations.

Petitioner anticipates that Respondents may cite the Court two cases where substantial compliance has been allowed in redemption cases. Petitioner would urge the Court to first examine whether those decisions were rendered in a due process context. Petitioner also anticipates that any case cited by Respondents in favor of substantial compliance will also show that all of the information required under the statutory scheme was present and provided and that it was only the manner of the presentation of the information which deviated from the statutory requirements. That is not the case here, where FmHA provided absolutely none of the required information concerning what interest, if any, it had in the property begin redeemed.

The Doctrine of Substantial Compliance does not apply because the deviations from the statutory redemption scheme result in prejudice to Petitioner Savoy. Tech-Fluid Serv. v. Gavilan Operating, 787 P.2d 1328, 1333 (Utah App. 1990). The Utah Court of Appeals stated the rule regarding strict compliance versus substantial compliance as follows:

> "Courts, in evaluating the necessity for strict compliance in these kinds of cases, focus upon the nature of the statutory requirements and the likelihood of prejudice. If failure to adhere to the requirements will affect a **substantive right** of one of the parties and possibly **prejudice** that party, then courts require **strict compliance**. On the other hand, if the requirements are merely procedural and will not prejudice one of the parties, substantial compliance is sufficient." (emphasis added.)

In the present case, Savoy, as a shareholder in IPCA, had a right to redeem from FmHA as a subsequent redemptioner under M.C.A. §25-13-804. IPCA held a fourth position on Tract II, behind FmHA. Since FmHA failed to provide an affidavit stating the amount of its outstanding lien, Savoy did not know how much money was required to redeem from FmHA. Additionally, if FmHA had filed its certified lien and affidavit (as required by statute) anyone could have gone to the Bank of Fairfield or IPCA and obtained their interest to redeem. FmHA's failure to comply with the redemption statutes denied Savoy his substantive right of redemption. This resulted in **substantial prejudice** to

Savoy. Additionally, FmHA officer Roger Meredith admitted a person could not determine the amount owing from the affidavit filed by FmHA in the original foreclosure action. (Meredith deposition, pp. 34-35). Therefore, the Doctrine of Substantial Compliance is not applicable in this case and FmHA should not be allowed to redeem.

In the present case, Petitioner Savoy's rights were clearly prejudiced. When a redemption is allowed under the statutes the purchaser's right to obtain, hold, occupy or use real property is forever extinguished. When the statutes are followed, the rights of all parties are protected. When the statutes are not followed, there is no opportunity for Petitioner to voice objection or opinion.

H. Cascade County Sheriff's Department Participated in Taking Petitioner's Property Without Due Process.

Cascade County Sheriff's Department failed to enforce the mandatory provisions of the state statutes. The Cascade County Sheriff's Department (CCSD) had a duty under M.C.A. §25-13-811

to convey full title to the purchaser at an execution sale. Additionally, M.C.A. §25-13-810 specifically states that if there is no redemption made within one year after the sale, then the purchaser is entitled to a conveyance by a sheriff's deed. Finally, M.C.A. §25-13-801 to 807 clearly establishes that the sheriff has the duty to determine that an entity is a proper redemptioner and has followed all the necessary steps in order to redeem. Just as it is necessary for a redeemer to follow all of the statutory mandates in order to properly redeem real property, certainly it is also required of the sheriff's office to verify that a proper redemption has occurred and further to refuse the attempted redemption if it is not properly executed. As set forth above, the sheriff's department is statutorily obligated to transfer a deed for the property to the purchaser if a proper redemption does not occur.

CCSD was obligated to see whether FmHA fell under the categories listed in M.C.A. §25-13-801. Evidence of this was to be given to CCSD under M.C.A. §25-13-807 by showing to CCSD a copy of the docket of the judgment under which FmHA

claimed the right to redeem, certified by the clerk of the court. As set forth above, the judgment given to CCSD on the date of the attempted redemption was the judgment in favor of Interstate Production Credit Association and the Federal Land Bank of Spokane, not FmHA. That judgment, on page 5, specifically states that FmHA was not receiving a judgment because no claim had been made against the Sands. Nor did the Sheriff's office ever obtain any other document which would allow it to determine that FmHA was a then unsatisfied lien holder with regard to this property. The Court is reminded that documents submitted to the Sheriff's office are to be certified by the clerk and recorder's office thus preventing unsubstantiated claims from being filed against real property. In this instance it is undisputed that CCSD accepted improper documentation of FmHA's claim and then notified Petitioner Savoy that a redemption had occurred and instructed him to come get his check.

Just as it is necessary for a redeemer to comply with all of the statutory mandates, so is it also required of the Sheriff's office to verify a proper redemption and refuse

redemption if not properly executed. As set forth above, the Sheriff's office allowed a redemption to occur without following the statutory mandates and refused its statutory obligation to provide Petitioner Savoy with a deed to his purchased property. This all occurred without the Sheriff's office giving Petitioner a meaningful opportunity to be heard prior to the redemption occurring. Petitioner in this case had to initiate his own action after the redemption in order to object to that redemption. Due process requires a prior hearing where, as here, there is a taking of a substantial interest. Memphis Light, Gas and Water Division v. Kraft, 436 U.S. 1 (1978). No such prior hearing was ever offered in this case.

I. The lower court overstepped their bounds by failing to follow the redemption statutes.

The State Director Court failed to uphold and enforce the State redemption statutes as stated previously. This resulted in an unconstitutional taking. The Montana Supreme Court, as pointed out strongly in the dissent, failed to follow the State statutes and shifted the burden

from the redemptioner to the person from whom redemption is sought. This judicial "repeal" of the statute violates M.C.A. §1-2-101 and 102 and provides an unconstitutional taking.

CONCLUSION

FmHA and the Sheriff by failing to strictly follow and apply the mandatory requirements of Montana's redemption statutes took Petitioner's real property without due process. Petitioner did receive a letter from FmHA, however, the letter was completely insufficient to put Petitioner and the Sheriff's Office on notice that FmHA was properly entitled to attempt to redeem the real property under Montana law. Nor was Petitioner given a fair or meaningful opportunity to object to the taking of his land before the event occurred. By allowing the improper redemption and by refusing to provide Petitioner with a deed after the one year waiting period, the Sheriff's Office participated in this taking and violated Petitioner Savoy's constitutional rights.

By validating the events of this case, the Montana Courts have guaranteed that every future redemption will occur

with a due process violation and no one will have protection under the law. The Supreme Court of the United States should remedy this situation by reversing the Montana Courts and requiring strict compliance with the statutory mandates regarding redemption. At a minimum, it should be ordered that FmHA failed to even substantially comply with the statutes and the Montana Supreme Court decision should be reversed and the property, and Savoy's constitutional rights, returned to him.

RESPECTFULLY SUBMITTED,

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Counsel of Record

October, 1994

APPENDIX

BEST AVAILABLE COPY

APPENDIX

Item

1. Montana Supreme Court Opinion, December 13, 1994

2. Montana Eighth Judicial District Court, Cascade County Findings of Fact, Conclusions of Law and Order

3. Montana Supreme Court Order, January 18, 1995

4. Amendment V to the Constitution of the United States of America

5. Amendment XIV to the Constitution of the United States of America

6. Montana Code Annotated (1993), §25-13-801, et seq.

7. Montana Code Annotated (1993), §1-2-101 and 102

8. Sheriff's Certificate of Sale on Decree or Order of Sale May 24, 1989

APPENDIX ITEM NO. 1

BEST AVAILABLE COPY

No. 94-061

IN THE SUPREME COURT OF THE
STATE OF MONTANA

1994

WALTER H. SAVOY,

Plaintiff-Appellant,

-v-

CASCADE COUNTY SHERIFF'S DEPT.;
and UNITED STATES OF AMERICA,
by and through the FARMER'S HOME
ADMINISTRATION, its agency,

Defendant-Respondents.

APPEAL FROM: District Court of the Eighth Judicial District, In and for the County of Cascade, The Honorable John McCarvel, Judge presiding.

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For Respondent:

George Darragh, Jr., Assistant U.S. Attorney, Great Falls, Montana; Nancy Cory, Great Falls, Montana

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Submitted on Briefs:
September 15, 1994

Decided: December 13, 1994

Justice Fred J. Weber delivered the Opinion of the Court.

This is an appeal from a grant of summary judgment to defendants in this case by the Eighth Judicial District Court, Cascade County, Montana. We affirm.

We consider the following issues on appeal:

I. Did the District Court err when it determined that Farmer's Home Administration had substantially complied with the redemption statutes found at § 25-13-801, et seq., MCA?

II. Did the District Court err when it determined that Farmer's Home Administration was a proper party to redeem?

III. Did the District Court err when it determined that the Cascade County Sheriff's Office had acted appropriately in not presenting Mr. Savoy with the deed to Tract II?

The real property involved here was the subject of a foreclosure action brought by the Federal Land Bank of Spokane against Hugh D. and Rita D. Sands. The foreclosure action involved three tracts of land, only two of which enter into this action, Tract I, and Tract II.

A decree of foreclosure was entered on February 28, 1989, by the Eighth Judicial District Court upon stipulation of the five junior lienholders and the default of the Sands. The court ordered a sale of the property on March 23, 1989, and the property was sold at a Sheriff's Sale. Tract I and Tract II were purchased by Walter H. Savoy (Savoy) to whom the Sheriff issued a Certificate of Sale dated May 24, 1989. Savoy paid $3,001 for Tract I and $35,000 for Tract II.

The statutory period for redemption is one year. Thus, any redemptioner had until May 23, 1990, to redeem the property from Savoy.

On May 17, 1990, Patrick Sands, a successor-in-interest to Hugh and Rita Sands provided to Sheriff Barry Michelotti a notice of redemption for Tract I. The Sheriff's Office issued a sheriff's certificate of redemption on May 21, 1990, for Tract I at the same time Patrick Sands issued to Sheriff Michelotti a check in the amount of $3,180.06

Also, on or about May 17, 1990, Farmer's Home Administration (FmHA) sent a copy of a letter to the Sheriff of Cascade County addressed to Savoy stating that it was redeeming, for $85,000, Tract II of the property purchased by Savoy at the March 23, 1989 foreclosure sale. The letter told Savoy to contact Ms. Hensleigh, the County Supervisor for FmHA, if he had any questions.

Also attached to the letter sent to the Sheriff was a copy of the decree of foreclosure in favor of Federal Land Bank that included a list of the lienholders on the property, of which FmHA is listed as second, third and fifth lienholders having

mortgages on the property. Also attached to the letter sent to the Sheriff was a check for $90,030.14, of which $85,000 was the purchase price paid by Savoy and the remainder representing the interest accrued on this money from the date of the sale.

Sometime before June 8, 1990, Savoy contacted the Sheriff's Office. He had questions about the process of redemption and Deputy Sheriffs John Strandell and Richard Duncan directed Savoy to §25-13-801, et seq., MCA, and suggested that he obtain legal counsel.

On June 8, 1990, the Sheriff's Office received a letter from Savoy's counsel stating that neither of the redemptions of Tract I and Tract II were appropriate and citing §25-13-807, MCA, in support of this proposition. The letter directed the Sheriff to issue deed for Tract I and Tract II to Savoy because the Notices of Redemption are invalid.

On August 17, 1990, Savoy filed a Complaint for Declaratory Judgment and Petition for Writ of Mandamus. The United States attempted to have the action removed to federal court, but Judge Paul Hatfield refused jurisdiction on October

26, 1990. A hearing was held on December 4, 1990, and the Eighth Judicial District Court heard oral arguments concerning the writ of mandamus. On December 20, 1990, the court issued its findings of fact and conclusions of law, denying Savoy's request for Writ of Mandamus.

Following the December ruling, the court ordered the Sheriff's Office to issue the deed to FmHA. The Cascade County Sheriff issued the deed pursuant to this order. Also following the December ruling, the parties engaged in discovery. FmHA and the Cascade County Sheriff's Office moved for summary judgment as did Savoy. A hearing was held November 29, 1993, and the court granted summary judgment to FmHA and the Cascade County Sheriff's Office.

Savoy appeals this grant of summary judgment.

Standard of Review

The standard for reviewing a grant of summary judgment is the same as that used by the district court. Emery v. Federated Foods, Inc. (1993), 262 Mont. 83, 863 P.2d 426. We must determine whether there is an absence of genuine issues of material

fact and whether the moving party is entitled to judgment as a matter of law. Minnie v. City of Roundup (1993), 257 Mont. 429, 849 P.2d 212.

I.

Did the District Court err when it determined that Farmer's Home Administration had substantially complied with the redemption statutes found at §25-13-801, et seq., MCA?

The redemption statutes with which we are directly concerned in this case are the following:

> 25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk, and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien.
>
> 25-13-807. Papers redemptioner must produce. A redemptioner must produce, to the officer or person

from whom he seeks to redeem, and serve with his notice to the sheriff:

(1) a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the county clerk; or if upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

(3) an affidavit by himself or his agent showing the amount then actually due upon the lien.

25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale or, in case his term of office has expired, to his successor in office.

We will first review the pertinent findings of fact and conclusions of law on the part of the District Court.

Findings of Fact: On February 28,

1989, a decree of foreclosure was entered in the case of Interstate Production Credit Ass'n, plaintiff, v. Hugh Sands, et al., in the District Court. On May 23, 1989, a sheriff's sale was held and plaintiff Savoy purchased the property known as Tract I for $3,001 and Tract II for $85,000, with the property located in Cascade County and with the property description of each tract set forth in the judgment and decree of foreclosure.

On May 17, 1990, six days less than one year after the date of sheriff's sale, the FmHA submitted to the Cascade County Sheriff's Department a notice of its intention to redeem the property known as Tract II. The notice was attached to a letter addressed to Savoy. FmHA also presented to the Sheriff with that letter a certified copy of the judgment decree in the action brought by Federal Land Bank as evidence of its right to redeem. Also enclosed with the notice to the Sheriff was a United States Treasury check in the amount of $90,030.14, which covered the original purchase price of $85,000 with interest at six percent for 360 days as mandated by statute. At the same time Tract II was being redeemed by FmHA, Tract I was redeemed by FmHA, Tract I was redeemed by an assignee of the original

debtor. The notice of redemption provided to the Sheriff's Office was not filed at the clerk and recorders office (which did not meet the requirement of §25-13-806, MCA, which requires that notice be filed with the county clerk). Some time between May 17, 1990 and June 8, 1990, Savoy's counsel went over the documents in the Sheriff's files. On June 8, 1990, Savoy through his attorney notified the Sheriff that he was contending that the redemption notice of FmHA was defective and such letter indicated plaintiff was protesting the redemption of both Tracts I and II, pursuant to §25-13-807, MCA. No explanation of the nature of plaintiff's objections to the notice of redemption was given.

The District Court findings referred to various motions and hearings conducted by it, and also to depositions taken by the parties. Following a hearing in December 1990, the District Court ordered the Sheriff to issue a sheriff's deed to FmHA and that was done.

The District Court then adopted various conclusions of law including the following:

III.

Here, the Cascade County Sheriff's Department received a certified copy of the judgment and decree of foreclosure with the notice of intention of Farmers Home Administration to redeem. In that judgment decree, the mortgage held by the Farmers Home Administration relative to Tract II was set forth with sufficient clarity and was identified appropriately by date and recording information. The information provided in the judgment decree was sufficient to allow any person to appropriately search the records and obtain information relative to the mortgage. The documents submitted by Farmers Home Administration provided the sheriff with adequate evidence of its right to redeem.

IV.

Cascade County Sheriff's Department did not receive an affidavit of an amount due upon the mortgage from the Farmers Home Administration on May 17, 1990, and at no time thereafter. This affidavit does not affect Farmers Home Administration's ability to redeem or propriety as a redeeming party, but is relevant only if a subsequent redemption were attempted. Plaintiff had actual knowledge of Farmers Home Administration redemption. . .

V.

The notice of redemption was presented six days prior to the

expiration of the redemption period. The notice provided by plaintiff, by and through his counsel of record, of his objection to the notice of redemption came after the redemption period expired. Further, the notice of objection was vague, ambiguous and set forth no specific grounds of objection. There is no evidence that prior to the redemption period expiring plaintiff made any effort to determine the amount actually due and owing to Farmers Home Administration upon its mortgage. It is plainly apparent that plaintiff's objections demonstrate a preconceived desire to refuse to accept tender. If plaintiff had pointed out his objections Farmers Home Administration would have had time to remedy technical deficiencies. If one fails to state his objections to a tender, he is deemed to have waived them.

VI.

Redemption statutes are remedial in nature and are to be liberally construed. In the absence of prejudice to the other parties, substantial compliance with the redemption statutes is sufficient to effect a redemption. Plaintiff received the full amount he was entitled to by the redemption. Plaintiff took no action to effect a subsequent redemption, if he was a party entitled to, and therefore has failed to show any prejudice.

The District Court then issued its

order granting summary judgment to FmHA, and the plaintiff Savoy appeals from that.

We agree that the legal conclusion of the District court was correct as to the remedial nature of redemption statutes. We hold that redemption statutes are remedial in nature and are to be liberally construed and that in the absence of some form of prejudice to parties involved, substantial compliance with redemption statutes is sufficient to affect a redemption in connection with mortgage foreclosure. A general statement to that effect was stated by this Court in Dipple v. Neville, et al. (1928), 82 Mont. 280, 291, 267 P. 214. In the Utah case of United States v. Loosley (1976), 551 P.2d 506, the Utah court said the following in connection with a redemption from a mortgage foreclosure:

> . . . The main purpose of a mortgage is to ensure the payment of the debt for which (it) stands as security; and foreclosure is allowed when necessary to carry out that objective. But foreclosure is in the nature of a forfeiture, which the law does not favor. The proceeding is one in equity in which principles of equity should be applied. . .
>
> Consistent with the foregoing, rules and statutes dealing with

> redemption are regarded as remedial in character and should be given liberal construction and application to permit a property owner who can pay his debts to do so, and thus make his creditor whole, and save his property. Therefore, if a debtor, acting in good faith, has substantially complied with the procedural requirements of the rule in such a manner that the lender mortgagee is not injured or adversely affected, and is getting what he is entitled to, the law will not aid in depriving the mortgagor of his property for mere falling short of exact compliance with technicalities.

See also cases cited in Loosley including 55 Am.Jur, Mortgages, Sec. 867. With the foregoing rule of law as the background, we will consider the arguments of Savoy.

Savoy objects to the failure of FmHA to present the Sheriff's Office with a certified copy of its existing mortgage and an affidavit of the amount owed under that mortgage, both of which are required to be presented to the Sheriff's Office by the provisions of §25-13-807, MCA. Savoy is technically correct in making this objection. However, the letter from FmHA directed to Savoy, of which a copy was served upon the Sheriff's Office with a copy of the original Federal Land Bank foreclosure, specifically stated that FmHA

was redeeming Tract II. The decree of foreclosure furnished contained a list of lienholders on Tract II, and FmHA was listed as holding mortgages in the second, third and fifth lien position. The mortgages were described by specific reference to the book and page of recording in the office of the clerk and recorder. Savoy's own affidavit of December 28, 1990, states that his attorney went to the Sheriff's Office and reviewed the documents in the Sheriff's file. Thus, Savoy's attorney had the list of mortgages and their priorities. Savoy is properly chargeable with that knowledge.

Savoy contends he was prejudiced because no amount was listed as still owing under the FmHA mortgages. As previously stated, the letter from FmHA to Savoy gave him the name and telephone number of a person to call in FmHA if he had any questions. Savoy made no attempt to determine an amount owing on the mortgages or any other aspect of information. The only significant reason for Savoy needing the amount of the mortgage would have been if Savoy had himself wished to redeem the property. Savoy had 60 days from the time FmHA redeemed to himself redeem under the

provisions of §25-13-803, MCA. The record discloses that Savoy made no attempt of any type to redeem nor does the record contain any facts demonstrating that Savoy desired to redeem.

So far as the amount owing to FmHA, we conclude that Savoy had sufficient notice had he desired to redeem and that he sustained no prejudice as a result of FmHA's failure to file an affidavit of the amount owing with the Sheriff's Office.

Savoy had adequate knowledge that FmHA was a mortgage holder on the property he had purchased known as Tract II and that a substantial amount of money was undoubtedly owing under three mortgages. Savoy knew that he had 60 days in which to attempt redemption from FmHA and made no attempt to redeem or to discover any additional facts. We further point out that FmHA gave notice of redemption to Savoy six days before the end of its redemption period and had Savoy notified FmHA that he had questions or desired additional information of record, FmHA could have furnished the same. We agree with the conclusion of the District Court that Savoy received the full amount to which he was entitled for redemption purposes and that Savoy took no action to

affect a subsequent redemption and has failed to show any prejudice as a result of the technical failures of FmHA to comply with the redemption statutes. We agree with the District Court that there are no questions of material fact. We affirm the holding of the District Court that FmHA substantially complied with the redemption statutes and therefore was entitled to judgment as a matter of law. We hold the District Court did not err in granting summary judgment to FmHA.

II.

Did the District Court err when it determine that Farmer's Home Administration was a proper party to redeem?

Savoy argues that the papers supplied to the Sheriff's Office admit that FmHA has no judgment against the property. Further, Savoy claims that the papers submitted to the Sheriff were inadequate to prove that FmHA had an open mortgage still existing on the property. FmHA argues that it is a proper party and the court so found.

Section 25-13-801, MCA, states:

> Who may redeem. (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons or their successors in interest: . . . .
>
> (b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part thereof subsequent to that on which the property is sold.

We have determined that Savoy had adequate notice that FmHA had a legitimate mortgage on the property he bought at the foreclosure sale. Therefore, FmHA, being the holder of a mortgage, had the statutory right to redeem the property from Savoy.

We hold that the District Court did not err in determining that FmHA was a proper party to redeem Tract II.

III.

Did the District Court err when it determined that the Cascade County Sheriff's Office had acted appropriately in not presenting Mr. Savoy with the deed to Tract II?

Savoy argues that the Sheriff's

Office should have know that the redemption was insufficient and should have issued Savoy the deed immediately upon his request. The Sheriff argues that he had requests from two different parties for issuance of the final deed to Tract II of the property and that he had to await the court's decision concerning to whom to issue the deed.

The court determined that the Sheriff's Office acted appropriately. We conclude that the record indicates that the Sheriff had no alternative but to await the court's order. The record also shows that immediately upon issuance of the order FmHA received the deed. We hold the District Court did not err when it determined that the Cascade County Sheriff's Office had acted appropriately in not presenting Mr. Savoy with the deed to Tract II.

Affirmed.

/s/ Fred J. Weber
Justice

/s/ J. A. Turnage
Chief Justice
/s/ John Conway Harrison

/s/ William E. Hunt, Sr.
Justices

Justice Karla M. Gray, concurring in part and dissenting in part.

As far as it goes, I concur in the Court's discussion on the issue III. As to issues I and II, I respectfully dissent. Given the remedial nature of mortgage redemption statutes, I agree that substantial compliance should be sufficient to effect a redemption in a mortgage foreclosure action. I do not agree, however, that FmHA was in substantial compliance with the redemption statutes at issue in this case.

The Court's analysis and resolution of issue I focuses almost totally on what Savoy did or did not do in response to FmHA's attempt to redeem. That focus is entirely inappropriate; the issue is whether FmHA substantially complied with statutory requirements, not whether or how Savoy responded. On that issue, I strenuously disagree with the Court's analysis and result. I note in this regard that the Court does not even bother to analyze the "substantial compliance" question, but goes directly to the "prejudice" question. I submit that even the Loosley language on which the Court relies does not validate such an approach, but clearly requires the "substantial

compliance" analysis to precede any "prejudice" analysis; only where substantial compliance has been established--as is not the case here, in my view--can a court proceed to a prejudice analysis. Instead, the Court here approaches the case backwards by using a lack of prejudice to itself establish substantial compliance.

Insofar as is relevant here, §25-13-807, MCA, required FmHA to produce to the person from whom redemption is sought 1) a certified copy of the judgment or of the docket of the judgment; 2) a certified note of the record of the mortgage; and 3) an affidavit showing the amount actually due. The Court concedes that only one of these requirements was met. It then may have concluded, without so stating, that meeting one of three applicable statutory requirements constitutes "substantial compliance." In doing so, the Court totally--and inappropriately--vitiates the statutory requirements. I cannot agree.

Moreover, the Court's focus on Savoy's actions or inactions also is inappropriate. It results in this Court telling redemptioner they need not comply with mandatory statutory provisions, in hopes that a party protesting the

redemption will not meet judicially created and imposed standards. For example, the Court notes that Savoy's protest did not specify the bases under §25-13-807, MCA, for the protest. The Court conveniently fails to cite to any authority requiring such a specification of the bases for a protest; in addition, the court's conclusion that the statutory requirements were not met by FmHA--on the face of it--hardly lends support to the notion that the failure to specify bases for the protest is somehow relevant here.

The court also dwells on a variety of other omissions by Savoy--none of which is statutorily based--in order to support its resolution of this issue. It suggests that Savoy had some obligation to check property records and telephone around in order to find for himself the information the statute required FmHA to provide to him. The effect is to shift a clear statutory burden from the redemptioner to the person from whom redemption is sought. In essence, the court has either totally rewritten §25-13-807, MCA, or has decided to judicially repeal that statute. We are not free to do either. See §§ 1-2-101 and -102, MCA.

For these reasons, and others about

which a lengthy recitation of the multitude of defects in the redemption procedures used here would serve little purpose other than to give the Court's opinion more precedential effect, I dissent. I would reverse the District Court.

/s/ Karla M. Gray
Justice

Justice James C. Nelson and Justice Terry N. Trieweiler join in the foregoing concurring and dissenting opinion of Justice Karla M. Gray.

/s/ James C. Nelson
Justice

/s/ Terry N. Trieweiler
Justice

APPENDIX ITEM NO. 2

MONTANA EIGHT JUDICIAL DISTRICT COURT,
CASCADE COUNTY

WALTER H. SAVOY, Plaintiff,	)	
-vs-	)	No. BDV-90-769
CASCADE COUNTY SHERIFF'S DEPARTMENT; and UNITED STATES OF AMERICA, by and through the Farmers Home Administration, its agency, Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

On November 29, 1993, a hearing was held by the Court on all parties' motions for summary judgment. The plaintiff was present and represented by Gary Deschenes. Defendant United States of America was represented by George Darragh and Defendant Cascade County Sheriff's Department was represented by Nancy P. Cory. The Court noted that all parties had filed motions for summary judgment and oral testimony was heard and counsel presented various authorities to the Court for its consideration in determining the various motions for summary judgment.

Based upon the briefs presented to the Court, arguments of counsel, all pleadings on file here including all discovery recently filed with the Court and the Court being fully informed, the Court makes the following:

FINDINGS OF FACT

I.

On or about February 28, 1989, a judgment and decree of foreclosure were entered in the case of Interstate Production Credit Ass'n, Plaintiff vs. Hugh Sands, et al. Defendants, Cause No. BDV-86-991, in the Montana Eight Judicial District Court, Cascade County. Pursuant to this judgment and decree of foreclosure, an order of sale was issued commanding the Cascade County Sheriff to sell the real property described in the judgment and decree by tracts.

II.

On or about May 23, 1989, a Sheriff's sale was held and Plaintiff, Walter Savoy, purchased the property known as "Tract I" for $3001.00 and "Tract II" for $85,000.00, which property was located in Cascade County, Montana, and the property description of each tract was separately set forth in the judgment and

decree of foreclosure, as well as the order of sale.

III.

On May 17, 1990, the Farmers Home Administration submitted to the Cascade County Sheriff's Department notice of its intention to redeem the subject property known as "Tract II". The notice of intention to redeem was in the form of a letter directed to Barry Michelotti, Sheriff, of the Cascade County Sheriff's Department. The Farmers Home Administration also presented with that letter a certified copy of the judgment decree above-described to evidence its right to redeem. Also enclosed with the May 17, 1990 notice of intention to redeem was U.S. Treasury check #308423611912 in the amount of $90,030.14. This amount of money represented the purchase price paid by Plaintiff for Tract II with interest at six percent (6%) per annum for 360 days, as statutorily mandated.

IV.

On or about the same date, the Farmers Home Administration submitted to the Cascade County Sheriff's Department a notice of redemption.

V.

At or about the same time Tract II was being redeemed by the Farmers Home Administration, Tract I was also being redeemed from plaintiff by an assignee or successor in interest of the debtor. Plaintiff received a check in the appropriate amount from the redemptioner for "Tract I." No legal challenge has been initiated as to the redemption of "Tract I" and there were no subsequent redemptions.

VI.

On or about May 17, 1990, the Cascade County Sheriff's Department prepared and recorded a Sheriff's Certificate of Payment Price of Real Property under Decree of Foreclosure. This document recited that the Farmers Home Administration, an agency of the United States of America, had tendered and paid the amount of $90,030.14, which amount represented the purchase price of "Tract II," together with interest, by the purchaser, Plaintiff, Walter Savoy.

VII.

On or about May 17, 1990, the date the Farmers Home Administration provided the Cascade County Sheriff with notice of

its intention to redeem the property, the same notice was given to Plaintiff by the Farmers Home Administration. That notice stated that the property being redeemed by the Farmers Home Administration was Tract II, the property Plaintiff had purchased for $85,000.00. The May 17, 1990 notice to Plaintiff reflects that the notice of redemption was also sent with that letter.

VIII.

The notice of redemption provided to the Cascade County Sheriff's Department by the Farmers Home Administration was not recorded at the Cascade County Clerk and Recorder's Department.

IX.

Sometime after May 17, 1990, but before June 8, 1990, plaintiff contacted Cascade County Sheriff's Office and had a meeting with Deputy Sheriffs John Strandell and Richard Duncan. During this meeting, plaintiff was informed of the redemption, but was told that the Cascade County Sheriff's Department could not provide legal advice.

X.

On June 8, 1990, the Plaintiff, through his counsel, notified the Cascade

County Sheriff's Department generally that he was contending that the redemption notice the Farmers Home Administration was defective [sic]. The June 8, 1990 letter authored by Gary Deschenes, counsel for plaintiff, indicated plaintiff's intention to protest both redemption of Tract I and Tract II but did not set forth the nature of the plaintiff's objections to the notice of redemption. The letter only generally alleged that both of the redemptions were in violation of §25-13-807, M.C.A.

XI.

Plaintiff filed a petition for Writ of Mandamus, Complaint for Declaratory Judgment, and alleged violation of constitutional rights for taking of property without due process of law, naming the Cascade County Sheriff's Department and Farmers Home Administration as defendants.

XII.

On or about December 5, 1990, the Court heard plaintiff's petition for Writ of Mandamus. The plaintiff testified at the hearing as did Susan Hensleigh from Farmers Home Administration. Subsequent to that hearing, and or about December 20, 1990, the Court entered comprehensive

Findings of Fact, Conclusions of Law and Order denying plaintiff's petition for Writ of Mandamus.

XIII.

Subsequent to the December, 1990 order above-referred to, the parties proceeded with various discovery including depositions of three Sheriff's deputies, John Strandell, Richard Duncan, and James Burnes, and the Sheriff of Cascade County. Plaintiff also deposed employees of Farmers Home Administration who were involved with the redemption of "Tract II". Nothing in these depositions which have been reviewed by the Court revealed any conflict with the underlying facts as set forth in this Court's order concerning plaintiff's petition for Writ of Mandamus entered in December of 1990.

XIV.

The only contact by any members of the Cascade County Sheriff's office with plaintiff prior to the June 8th correspondence from Deschenes and other than at the judicial sale in May of 1989 occurred after the redemption was affected by Farmers Home Administration. The only contacts then between plaintiff and the Cascade County Sheriff's Department were in an effort to provide to plaintiff the

U.S. Treasury check submitted by Farmers Home Administration. During none of the contacts between Cascade County Sheriff's Department and plaintiff were there any indications that the Sheriff's Department did anything other than attempt to appropriately provide to Plaintiff the proceeds of the redemption from Farmers Home Administration.

XV.

Following the December, 1990 hearing the Court directed the Cascade County Sheriff's Department to issue the Sheriff's deed to Farmers Home Administration. The Sheriff of Cascade County issued the Sheriff's deed pursuant to this order.

XVI.

Counsel for Plaintiff herein represented one of the parties in the underlying foreclosure action and in that capacity had received in June of 1989 an affidavit from an employee of Farmers Home Administration showing that the unpaid interest and principal owing to Farmers Home Administration under its mortgage in relation to "Tract II" was in excess of $400,000.00.

BASED upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSION OF LAW

I.

The United States of America, by and through its agent, Farmers Home Administration, was a party entitled to redeem the property on May 17, 1990, under and pursuant to Montana statutes, by virtue of a mortgage held by the Farmers Home Administration.

II.

The Cascade County Sheriff's Department is statutorily required to accept papers and documents relative to the redemption process, and to prepare and execute a Sheriff's Deed at the conclusion of the redemption period. The Sheriff was obligated, pursuant to the Court's Order dated December 20, 1990, to issue the Sheriff's deed to Farmers Home Administration.

III.

Here, the Cascade County Sheriff's Department received a certified copy of the judgment and decree of foreclosure with the notice of intention of Farmers

Home Administration to redeem. In that judgment decree, the mortgage held by the Farmers Home Administration relative to Tract II was set forth with sufficient clarity and was identified appropriately by date and recording information. The information provided in the judgment decree was sufficient to allow any person to appropriately search the records and obtain information relative to the mortgage. The documents submitted by Farmers Home Administration provided the sheriff with adequate evidence of its right to redeem.

IV.

Cascade County Sheriff's Department did not receive an affidavit of an amount due upon the mortgage from the Farmers Home Administration on May 17, 1990, and at no time thereafter. This affidavit does not affect Farmers Home Administration's ability to redeem or propriety as a redeeming party, but is relevant only if a subsequent redemption were attempted. Plaintiff had actual knowledge of Farmers Home Administration redemption. If a subsequent redemption were attempted, there was sufficient information in the judgment and decree that accompanied the notice of intention to redeem to allow any inquisitive party to obtain the information that would be in

an affidavit of amount due.

V.

The notice of redemption was presented six days prior to the expiration of the redemption period. The notice provided by plaintiff, by and through his counsel of record, of his objection to the notice of redemption came after the redemption period expired. Further, the notice of objection was vague, ambiguous and set forth no specific grounds of objection. There is no evidence that prior to the redemption period expiring plaintiff made any effort to determine the amount actually due and owing to Farmers Home Administration upon its mortgage. It is plainly apparent that plaintiff's objections demonstrate a preconceived desire to refuse to accept tender. If plaintiff had pointed out his objections Farmers Home Administration would have had time to remedy technical deficiencies. If one fails to state his objections to a tender, he is deemed to have waived them.

VI.

Redemption statutes are remedial in nature and are to be liberally construed. In the absence of prejudice to the other parties, substantial compliance with the redemption statutes is sufficient to

effect a redemption. Plaintiff received the full amount he was entitled to by the redemption. Plaintiff took no action to effect a subsequent redemption, if he was a party entitled to, and therefore has failed to show any prejudice.

VII.

Upon redemption, the redemptioner is subrogated to the rights of the purchaser at the Sheriff sale which rights included the right to demand and receive a sheriff's deed to the premises if no further redemption was had within 60 days. The redemption transfers to the redemptioner all right, title and interest acquired by the purchaser. Title vested upon receiving the sheriff's deed to the premises which includes title free from encumbrances.

VIII.

The Cascade County Sheriff's Department performed all of its statutory duties and responsibilities in a reasonable, diligent and prudent manner.

IX.

When demand was made by Farmers Home Administration upon the Cascade County Sheriff's Department for issuance of a

Sheriff's Deed, the Cascade County Sheriff's Department also had a demand from the plaintiff to execute a Sheriff's Deed to him. The Cascade County Sheriff's Department did nothing until ordered by this Court in December of 1990 to issue the deed to Farmers Home Administration. When receipt of that order was obtained, the Cascade County Sheriff's Department appropriately issued its Sheriff's Deed to Farmers Home Administration as ordered to do so by this Court.

X.

Prior to the December, 1990 order of this Court requiring the Cascade County Sheriff's Departments to issue the deed to Farmers Home Administration, Cascade County Sheriff's Department had no obligation to issue the deed to Plaintiff Walter Savoy.

XI.

The Cascade County Sheriff's Department appropriately waited for the outcome of the Petition for Writ of Mandamus in order to determine which party was entitled to the Sheriff's Deed.

XII.

Because Farmers Home Administration was a party entitled to redeem and provided sufficient basis for any person to obtain information concerning the amount due upon the mortgage held by Farmers Home, plaintiff has not suffered any damages by Farmers Home's failure to provide the affidavit showing the amount due and owing.

XIII.

Plaintiff was not damaged in any way as a result of any act or omission on the party [sic] of Cascade County Sheriff's Department or the Farmers Home Administration.

BASED upon the foregoing Findings of Fact and Conclusions of Law, the Court enters the following:

ORDER

1. There are no material and relevant facts at issue herein and summary judgment is appropriate.

2. Based upon the undisputed material facts as presented to the Court, the Cascade County Sheriff's Department Motion for Summary Judgment is well taken

and should be granted in its entirety.

3. That the Motion for Summary Judgment filed by United States of America, by and through Farmers Home Administration, is well taken and should be granted in its entirety.

4. That plaintiff's Motion for Summary Judgment against Cascade County Sheriff's Department is hereby denied.

5. That plaintiff's Motion for Summary Judgment against the United States of America, by and through the Farmers Home Administration, is hereby denied.

IT IS HEREBY ORDERED that the Motion for Summary Judgment filed by Cascade County Sheriff's Department shall be granted and the Motion for Summary Judgment filed by United States of America, by and through the Farmers Home Administration, be granted in their entirety.

DATED this 16th day of December, 1993.

/s/ John M. McCarvel
District Court Judge

cc: Gary Deschenes
George Darragh
Nancy P. Cory

APPENDIX ITEM NO. 3

IN THE SUPREME COURT OF
THE STATE OF MONTANA
No. 94-061

WALTER H. SAVOY, Plaintiff, and Appellant, v. CASCADE COUNTY SHERIFF'S DEPARTMENT AND UNITED STATES OF AMERICA, by and through the Farmers' Home Administration, its agency, Defendants.	)	O R D E R

The petition for rehearing is denied.

DATED this 18th day of January, 1995.

/s/ J. A. Turnage

/s/ Karla M. Gray

/s/ William E. Hunt, Sr.

/s/ Terry N. Trieweiler

/s/ James C. Nelson

/s/ Fred J. Weber

APPENDIX ITEM NO. 4

U.S. CONSTITUTION

Amendment V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX ITEM NO. 5

U.S. CONSTITUTION

Amendment XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX ITEM NO. 6

Part 8
Redemption of Real Property

25-13-801. Who may redeem. (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

(a) the judgment debtor, the judgment debtor's spouse, or his successor in interest in the whole or any part of the property and, if the judgment debtor or successor be a corporation, a stockholder thereof;

(b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part thereof subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem.

(2) The persons mentioned in subsection (1)(b) of this section are, in this part, termed "redemptioners".

25-13-802. Time for redemption -

amount to be paid. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of his purchase with interest at a rate established by the judgment in the action that led to the execution sale, up to the time of redemption;

(2) the amount of any assessment or taxes which the purchaser may have paid thereon after purchase and interest on such amount;

(3) the amount of any repairs, maintenance expenses, or other expenditures that the purchaser may reasonably have made after purchase for the maintenance of the property, with interest on the amounts from the date of expenditure; and

(4) if the purchaser is also a creditor having a prior lien to that of the redemptioner other than the judgment under which such purchase was made, the amount of such lien with interest.

25-13-803. **Subsequent redemptions - when permitted, amount paid.** (1) If

property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption with interest thereon at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him with like interest on such amount, and the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within 60 days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest.

(2) If the judgment debtor or the judgment debtor's spouse redeem, the judgment debtor or the spouse must make the same payments as are required to effect a redemption by a redemptioner.

25-13-804. Redemption by stockholder or corporation. (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for his benefit the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action, that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption and within 60 days after the expiation of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for his benefit a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or

stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate established by the judgment in the action that led to the execution sale, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon; and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed and shall succeed to the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit setting forth the number of shares of stock owned by him and, to the best of his knowledge, the number of shares of stock of the corporation outstanding.

25-13-805. Redemption by debtor from spouse. If the spouse of a judgment debtor redeem, the judgment debtor, within 1 year after the date of sale, may redeem

by paying the spouse or the spouse's successors in interest or the sheriff for the benefit of the spouse or the successors in interest of the spouse the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the spouse or the successors in interest of the spouse, with like interest thereon.

25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk, and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien.

25-13-807. Papers redemptioner must produce. A redemptioner must produce to the officer or person from whom he seeks

to redeem, and serve with his notice to the sheriff:

(1) a copy of the docket of the judgement under which he claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the county clerk; or if upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

(3) an affidavit by himself or his agent showing the amount then actually due upon the lien.

25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale or, in case his term of office has expired, to his successor in office.

25-13-809. Effect of redemption by debtor or debtor's spouse - certificate of redemption. (1) If the debtor redeem, the effect of the sale is terminated and the debtor is restored to his own estate. If the spouse redeem, such spouse shall become the owner of the debtor spouse's interest, subject to any liens thereon at the time of the execution sale.

(2) Upon a redemption by a debtor or the debtor's spouse, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must

note the record thereof in the margin of the record of the certificate of sale.

25-13-810. When purchaser entitled to conveyance. If no redemption be made within 1 year after the sale, the purchaser or his assignee is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed and no other redemption has been made and notice thereof given and

the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of 1 year from the date of the sale to redeem the property.

25-13-811. Who to execute conveyance. In all cases when under the provisions of this chapter, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale if he still be in office, but in the case the officer who made such sale is not in office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

25-13-812 through 25-13-820 reserved.

25-13-821. Possession of lands during redemption period. The purchaser of lands at execution sales is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while said execution debtor personally occupies the land as a home for himself and his family. The intention hereof being to insure to such debtor the possession of

his land during the year of redemption.

25-13-822. Rents and profits during redemption period, accounting. (1) The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, are entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser or his or their assigns from the property thus sold preceding such redemption, the amount of such rents and profits shall be a credit upon the redemption money to be paid. Any payments made under 25-13-802(2) and (3) must be subtracted from the credit for rents and profits.

(2) If the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor or his assigns a written and verified statement of the amount of such rents and profits thus received, the period for redemption is extended 5 days after such sworn statement is given by such purchaser or his assigns to such redemptioner or debtor. If such purchaser or his assigns

shall, for a period of 1 month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting and disclosure of such rents and profits, and until 15 days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

25-13-823. Restraint of waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale or entitled to possession afterward, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, to use it in the ordinary course of husbandry, to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor or for the repair of fences or for fuel for his family while he occupies the property.

25-13-824. Enjoining injury to

property after sale and before conveyance. The court or judge may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property after a sale on execution, before a conveyance.

25-13-825. Damages for injury to property after sale and before conveyance. When real property has been sold on execution, the purchaser thereof or any person who may have succeeded to his interest may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance.

APPENDIX ITEM NO. 7

Part 1

General Provisions

1-2-101. Role of the judge -- preference to construction giving each provision meaning. In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

1-2-102. Intention of the legislature -- particular and general provisions. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

APPENDIX ITEM NO. 8

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
CASCADE COUNTY

INTERSTATE PRODUCTION CREDIT ASSOCIATION - GREAT FALLS,

Plaintiff,

-vs-

HUGH D. SANDS AND RITA D. SANDS, husband and wife; FEDERAL LAND BANK OF SPOKANE; UNITED STATES OF AMERICA, by and through the Farmers Home Administration, its agency; and FIRST NATIONAL BANK OF FAIRFIELD,

Defendants.

SHERIFF'S CERTIFICATE OF SALE ON DECREE OR ORDER OF SALE

No. BDV-86-991

THE FEDERAL LAND BANK OF SPOKANE, predecessor in merger to the Farm Credit Bank of Spokane, a corporation,

Defendant and Cross-Complainant,

-vs-

HUGH D. SANDS and RITA D. SANDS, husband and wife; RICHARD GARRIN and JEAN GARRIN, husband and wife, UNITED STATES OF AMERICA, by and through the Farmers Home Administration, its agency, and FIRST NATIONAL BANK OF FAIRFIELD,

Cross-Defendants.

I, Barry C. Michelotti, Sheriff of County of Cascade, in the State of Montana, do hereby certify that by virtue of a decree of the Eighth Judicial District Court of the State of Montana, in and for the County of Cascade, passed in the above entitled cause on the 28th day of February 1989 and of an Order of Sale issued therein on the 23rd day of March, 1989, to me as such Sheriff, duly directed and delivered, whereby I was commanded to sell the real estate hereinafter described, according to law, and to apply the proceeds of such sale toward the satisfaction of the judgment in said action for the sum of Twenty Four Thousand Five Hundred One and 84/100ths--------- Dollars, interest thereon, attorney's fees allowed in said decree, and the costs of said suit and of said sale thereunder, I duly levied upon, and after due and legal notice, I did, on the 23rd day of May, 1989, at 2:00 o'clock P.M. at Room 110 of the Courthouse Annex in the City of Great Falls, in the said County of Cascade, offer for sale singly and separately, according to law, at public auction, the several pieces and parcels of real estate set forth in said decree and order and hereinafter described, as and in one tract of land, and sold all of said real estate as and in one tract of land to Walter H. Savoy at and for the sum of Eighty Five Thousand and 00/100ths----------

Dollars, which was the highest and best bid therefor at said sale. The real property so sold is particularly described as follows, to-wit:

TRACT II

TOWNSHIP 21 NORTH, RANGE 2 WEST OF THE MONTANA MERIDIAN

Section 36: Lots 1, 2 and 3, SW¼SW¼, N½SW¼, EXCEPT that portion of Lot 1, described as follows:

Beginning at the Northeast corner of said Lot 1; thence West 850 feet; thence South 1300 feet; thence East 850 feet; thence North 1300 feet to the point of beginning.

TOWNSHIP 20 NORTH, RANGE 1 WEST OF THE MONTANA MERIDIAN

Section 6: Lot 4

TOWNSHIP 20 NORTH, RANGE 2 WEST OF THE MONTANA MERIDIAN

Section 1: Lot 1

TOWNSHIP 21 NORTH, RANGE 1 WEST OF THE MONTANA MERIDIAN

Section 31: Lot 8

Also the leasehold interest of the mortgagors in the lands leased from the State of Montana under Lease No. 52065, dated March 22, 1965, or any renewal or extension of said lease, and described as follows:

TOWNSHIP 21 NORTH, RANGE 2 WEST OF THE MONTANA MERIDIAN

Section 36: Lot 4

Together with all water and water rights used upon or appurtenant to said property, however, evidenced, and particularly 25 shares of stock in Rocky Reef Ditch Company, evidenced by Certificate No. 41;

Together with any and all tenements, hereditaments and appurtenances thereunto belonging or used in connection therewith.

And I further certify that the said sum of Eight Five Thousand 00/100ths---------- Dollars was the whole price paid by said purchaser for said real property sold to Walter H. Savoy by me and that said real property so sold is subject to redemption in lawful money of the United States pursuant to the statute in such case made and provided.

Barry C. Michelotti, Sheriff

By:/s/ James R. Burnes
Undersheriff

That the price of each distinct lot and parcel was as follows: Eighty Five Thousand and 00/100ths---------- Dollars.

And that the said real estate is subject to redemption in lawful money of the United States, pursuant to the Statutes in such cases made and provided.

Given under my hand this 24th day of May, A.D., 1989.

Barry C. Michelotti, Sheriff

By:/s/ James R. Burnes
Undersheriff

Supreme Court, U.S.
FILED
MAY 12 1995
CLERK

No. 94-1735

In The
Supreme Court of the United States
October Term, 1994

WALTER SAVOY,

Petitioner,

v.

CASCADE COUNTY SHERIFF'S DEPARTMENT; AND UNITED STATES OF AMERICA, BY AND THROUGH THE FARMERS HOME ADMINISTRATION, ITS AGENCY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MONTANA SUPREME COURT

BRIEF FOR RESPONDENT CCSD IN OPPOSITION

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Does petitioner have a protected property interest in the instant matter and, if so, was he afforded due process in the redemption procedure?

2. Did the Cascade County Sheriff's Department properly proceed in issuing the Sheriff's Deed to the FmHA after receiving a court order to do so?

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In the
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No. 94-1735

WALTER SAVOY,

Petitioner,

v.

CASCADE COUNTY SHERIFF'S DEPARTMENT;
AND UNITED STATES OF AMERICA,
BY AND THROUGH THE FARMERS HOME
ADMINISTRATION, ITS AGENCY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MONTANA SUPREME COURT

BRIEF FOR RESPONDENT CCSD IN OPPOSITION

JURISDICTION

The Supreme Court of the United States does not have jurisdiction over this matter as alleged by petitioner, pursuant to 28 U.S.C. § 1257(a). Petitioner does not enjoy a protected property interest and, consequently, there is no privilege or right properly claimed under the United States Constitution. Further, the majority of petitioner's claimed errors revolve around the application of state statutes under which there are no claims of

constitutional violation. Consequently, it is urged by respondent Cascade County Sheriff's Department ("CCSD") that jurisdiction be declined.

The statutes involved are Mont. Code Ann. §§ 25-13-801, *et seq.*, attached to the appendix hereto as **Exhibit A**.

STATEMENT OF THE CASE

The initial complaint in this action was filed on August 17, 1990, in Cascade County, Montana, seeking declaratory judgment and petition for writ of mandamus. A hearing on the writ of mandamus was held in December of 1990, and an order issued as a result of that hearing on December 20, 1990. A copy of that order is attached as **Exhibit B** to the appendix hereto. At the time of that hearing, petitioner Walter Savoy ("Savoy") was present, represented by counsel, and testified. He also called witnesses to testify on his behalf. As a result of that hearing, as well as the arguments and briefs of the parties, the state district court ordered that the Cascade County Sheriff's Department (hereinafter "CCSD") issue the deed to the Farmers Home Administration ("FmHA"), finding that there had been substantial compliance with redemption statutes.

Following that hearing and completion of some discovery, all parties moved for summary judgment. Summary judgment arguments were heard on November 29, 1993, and an order was

issued by Judge McCarvel on December 16, 1993, granting summary judgment in favor of FmHA and CCSD. The grant of summary judgment was appealed by Savoy to the Montana Supreme Court, which affirmed the grant of summary judgment by written opinion dated December 13, 1994. Savoy's petition for rehearing was denied on January 18, 1995.

FEDERAL QUESTION WHEN RAISED

Petitioner has consistently alleged from the outset of his complaint that the redemption statutes were not complied with by FmHA and, consequently, that CCSD should not have issued the deed to FmHA. Savoy raises no question as to the constitutionality of the statutes, only alleging that the statutes were not substantially complied with and that as a consequence the petitioner has been deprived of property without due process of law. The crux of petitioner's complaint has always been lack of strict compliance with the redemption statutes by FmHA, thereby entitling petitioner to the deed to the property in question.

STATEMENT OF THE FACTS

On February 28, 1989, a judgment and decree of foreclosure was entered in the Montana Eighth Judicial District Court, Cascade County, Cause No. BDV-86-991, a case initially brought by Interstate Production Credit Associates ("IPCA") against Hugh Sands and Rita Sands, the Federal Land Bank of Spokane, the United States of

America, and First National Bank of Fairfield. The Federal Land Bank of Spokane then filed a cross-claim against Hugh Sands and Rita Sands, Richard Garren and Jane Garren, the United States of America, and First National Bank of Fairfield.

In February of 1989, judgments and decrees of foreclosure were entered on both the complaint and the cross-complaint. IPCA obtained a judgment against the defendants, and as part of that judgment the sale of the subject real property was ordered. The Federal Land Bank of Spokane also obtained a judgment and decree of foreclosure on its cross-claim. As a part of its judgment, the Federal Land Bank of Spokane was allowed to sell Tract II of the real property described in the foreclosure action. The court ordered that Tract II be sold at a judicial foreclosure sale. An order of sale was issued by the court on March 23, 1989, directing CCSD to sell the described real property under both the complaint and the cross-complaint and the judgments rendered thereunder.

On May 23, 1989, pursuant to the order of sale, Sheriff Barry Michelotti did cause the sale to take place, and sold the real property by tract as ordered by the court. Tract I was purchased by petitioner, as was Tract II. Both were auctioned separately and purchased separately. Tract I was purchased for $3,001; Tract II was purchased for $85,000. On May 24, 1989, Undersheriff James Burns, the deputy in charge of the sale, prepared the Sheriff's Certificate of Sale on Decree or Order

of Sale. On May 17, 1990, Patrick Sands, successor-in-interest to Hugh and Rita Sands, provided to Sheriff Barry Michelotti a Notice of Redemption by the successor-in-interest to the judgment debtors. Attached as Exhibits A and D to the Notice of Redemption was a certified copy of the Sheriff's Certificate of Sale on Decree or Order of Sale, and a Quit Claim Deed wherein Hugh D. Sands and Rita D. Sands transferred their interests in the subject property to Patrick Sands. Sheriff Michelotti, by Undersheriff John Strandell, issued a Sheriff's Certificate of Redemption on May 21, 1990, in relation to Tract I, and presented that, along with a check in the amount of $3,180.06, to petitioner Walter Savoy.

On May 17, 1990, Sheriff Michelotti received a document entitled "Notice of Redemption" from FmHA. The document described the property to be redeemed as Tract II, and contained a legal description of Tract II. The document also identified the property as that which was sold to petitioner on May 23, 1989. Accompanying the Notice of Redemption was a check in the amount of $90,030.14. This amount represented the purchase price of $85,000, together with statutorily allowed interest. Also accompanying the Notice of Redemption was a letter directed to Walter Savoy from Susan Hensley, who was represented to be the County Supervisor of FmHA. The letter informed petitioner that the property identified as Tract II and purchased by petitioner on May 23, 1989, for the price of $85,000 was being redeemed by FmHA. The last sentence of the letter directed

Mr. Savoy to contact Ms. Hensley if he had any questions.

Sheriff Michelotti, by and through Undersheriff John Strandell, prepared a Sheriff's Certificate of Payment Price of Real Property and Decree of Foreclosure. This document appropriately described Tract II in its entirety by legal description, and represented that FmHA, a judgment debtor, tendered the appropriate amount of money, including principal plus accrued interest up to the time of redemption.

Sometime after the stated intention to redeem, petitioner contacted CCSD and had a meeting with Undersheriff John Strandell and Deputy Richard Duncan. Petitioner presented questions about the redemption process, and Undersheriff Strandell cited petitioner specific statutes pertaining to redemption and made them available to petitioner (Strandell Depo., p. 6). Undersheriff Strandell also recalls that the petitioner was unhappy because he did not feel that at the time of the sale the redemption rights were appropriately explained, and no one explained to him who had the right to redeem (Strandell Depo., p. 7). Undersheriff Strandell told petitioner during this conversation that he could not provide legal advice to petitioner in relation to the redemption. This meeting took place sometime prior to May 24, 1990 (Strandell Depo., pp. 8-9).

CCSD did not hear anything further in relation to the redemption until June 8, 1990, at

which time a letter was received from attorney Gary Deschenes, who is currently representing petitioner. Mr. Deschenes' letter cited very generally to Mont. Code Ann. § 25-13-807 in support of the general proposition that the redemption was not appropriate. Demand was made that the Sheriff's Deed be issued to petitioner. A response by letter was made on June 21, 1990, explaining that the general nature of the complaint of "irregularity" precluded any real review, but invited Mr. Deschenes to further discuss the matter. On June 26, 1990, Mr. Deschenes confirmed, after discussion, that CCSD would do nothing further until a court order was in place instructing CCSD as to who should receive the deed.

The next communication from the petitioner was his complaint seeking a writ of mandamus directing CCSD to issue the deed to petitioner.

The matter was schedule for hearing on the petition for writ of mandamus on December 4, 1990. Petitioner was present, testified, and called witnesses to testify in his behalf. Agents of the FmHA were present and testified, as well. Cascade County Sheriff Barry Michelotti was present and available for testimony, but provided no testimony and took no position in relation to which party should receive the deed, only taking a position on the propriety of an award of attorney fees against CCSD. On December 20, 1990, the court, by order, denied the petition for writ of mandamus. In that order, the lower court

specifically held that the FmHA did present a certified copy of the judgment decree that evidenced its right to redeem. In that judgment decree, the mortgage of FmHA was described by recording information and by date. In the order, the lower court found, "The Cascade County Sheriff's Department performed all duties and responsibilities statutorily required of it in a reasonable, diligent and prudent matter." Findings of Fact, Conclusions of Law, and Order (12/20/90), p. 6, ¶ 7.

The petition for writ of mandamus was denied, and petitioner was denied an award of attorney fees against CCSD. The court also specifically found substantial compliance by FmHA with the redemption statutes, and that because FmHA was clearly a party entitled to redeem, any variation from the procedural aspect of the redemption statutes was not fatally defective. Consequently, the lower court ordered that CCSD issue a deed to FmHA for the property described as Tract II. Pursuant to that court order, the Sheriff's Deed was finally issued to FmHA in January of 1991.

On December 16, 1993, after complete briefing and oral arguments, the court entered an order awarding summary judgment to CCSD and FmHA. That order, which is attached hereto as **Exhibit C**, reveals that an affidavit had been received by counsel for petitioner in June of 1989, indicating that the amount of money owed to the FmHA under its mortgage in relation to Tract II

was in excess of $400,000. The court also indicated in its findings of fact that CCSD received from FmHA, with the Notice of Intention to Redeem, a certified copy of the Judgment Decree of Foreclosure. In that judgment decree, the mortgage held by FmHA relative to Tract II was set forth with sufficient clarity and identified appropriately by date and recording information so as to allow any interested person to search the appropriate records and obtain the information relative to the mortgage.

It is that order from which the appeal to the Montana Supreme Court was taken and, further, serves as a basis for the petition herein.

ARGUMENT

I. Introduction

Petitioner's argument that as a result of the foreclosure sale he enjoyed a property right is inaccurate and incorrect. Petitioner enjoyed no such protected property right. Instead, the defects of which petitioner complains are technical, at most, and because petitioner's interest in the property was an equitable one, it does not reach the stature of "property" within the meaning of the due process clause.

Even if petitioner's interest in the property did acquire the status of "property" within the parameters of the due process clause, petitioner

was afforded adequate due process, both procedurally and substantively.

II. Discussion

A. Petitioner Did Not Enjoy a Protected Property Interest

Petitioner claims that it is without dispute that he enjoyed a protected interest in property. However, the issue is not so simple as petitioner would have this Court believe. In *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 56 L.Ed.2d 30, 98 S.Ct. 1554 (1978), this Court recognized that there are procedural constraints on governmental actions that work a deprivation of property relating only to interests that acquire the stature of property within the meaning of the due process clause and its parameters. This Court has on numerous occasions recognized that there are instances where the "property" did not acquire the stature of being protected by the due process clause. In *Ingraham v. Wright*, 430 U.S. 651, 51 L.Ed.2d 711, 97 S.Ct. 1401 (1977), this Court noted that there were no procedural safeguards constitutionally mandated in school disciplinary cases. In *Dixon v. Love*, 431 U.S. 105, 52 L.Ed.2d 172, 97 S.Ct. 1723 (1977), this Court found that an evidentiary hearing was not necessary prior to revocation of a driver's license based upon repeated traffic offenses.

Numerous state courts have determined that the statutes setting forth the procedural parameters of redemption are procedural only and do not

affect substantive rights of the purchaser. *See*, ***Tech-Fluid Serv. v. Gavilan Operating***, ____ Utah App. ____, 787 P.2d 1328 (1990); ***GESA Federal Credit Union v. Mutual Life Ins. Co.***, 105 Wash.2d 248, 713 P.2d 728 (Wash. 1986).

The Montana Supreme Court has noted that the right of redemption "is not a property interest in any sense of the term but is a bare personal privilege." *See*, ***Lester v. J&S Investment Co.***, 171 Mont. 267, 557 P.2d 299, 301 (1976).

Consequently, it is not without dispute that the petitioner enjoyed a protected property interest. To the contrary, it is asserted by respondent CCSD that there was no protected property interest here, in that, at most, the petitioner enjoyed an equitable interest in the property and one that could be terminated by the simple exercise of one's redemption rights.

B. Petitioner Is Not Entitled to Due Process

Even if this Court were to determine that petitioner enjoyed a protected property interest, the inquiry does not end there. As this Court stated in ***Memphis Light***, *supra*:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise

> interested parties of the pendency of the action and afford them an opportunity to present their objection.

Id., , 436 U.S. at 13, 56 L.Ed.2d at 41.

The parameters of due process are based on three separate factors: (1) property interests that will be affected by the official action; (2) the risk of an erroneous deprivation through the procedures used and the value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See*, ***Mathews v. Eldridge***, 424 U.S. 319, 324, 47 L.Ed.2d 18, 96 S.Ct. 893 (1976). This Court acknowledged in ***Mathews*** that there are areas where the government may act without providing additional advance procedural safeguards.

Consequently, because there is no protected property interest here, the due process clause does not control. Even if it did control, there is no indication that the procedural safeguards that are in place are not adequate.

C. Statutory Parameters for Redemption in Montana

The petitioner complains that the FmHA failed to comply with various statutory mandates. Some of the alleged deficiencies do not at all affect

petitioner's status or position in the instant litigation. For instance, whether the FmHA filed a notice with the Clerk and Recorder's Office does not affect the status of the petitioner in the instant matter, and has no bearing whatsoever on whether petitioner was afforded the appropriate notice. Further, if FmHA had complied with the provision of serving a copy of the docket of the judgment or mortgage, petitioner would still be no further ahead than what he was when the FmHA provided a certified copy of the foreclosure order and judgment in the underlying matter, which sufficiently and clearly described the mortgage upon which FmHA was relying for its redemption interest.

Petitioner claims that payment of proper funds was not made. However, petitioner admitted during the December, 1990, hearing that he had received the money to which he was entitled for Tract II. He also admitted that prior to this redemption, he understood and knew that Tract I had already been redeemed by a party separate and apart from FmHA. Consequently, it seems contradictory for petitioner to be claiming that he then believed that FmHA was trying to redeem both tracts, when in fact the notice referred only to Tract II and the amount of money presented was only for Tract II. At no time has the FmHA attempted to redeem Tract I, in that it was properly redeemed at or about the same time that this instant redemption took place, by another, unrelated party. The redemptioner of Tract I has been in possession of the property since its redemption, and that has not been the subject of

any litigation. Consequently, the petitioner's claim that the payment of proper funds has not been made is a specious argument, and deserves no consideration.

An affidavit was not produced by FmHA to indicate the amount currently owing on the lien. However, as was noticed by the lower court's order awarding summary judgment in 1993, counsel for petitioner had received an affidavit dated June of 1989, 11 months prior to the redemption by FmHA, which indicated that the amount owed by the debtor to FmHA under the mortgage was over $400,000. During the 1993 summary judgment arguments, counsel for petitioner specifically noted that the petitioner was concerned about the land. "That's what he wants [the land], not the cash." *See*, Transcript on Appeal, Hearing (11/29/93), p. 13, ll. 9-10, **Exhibit D** hereto.

Unfortunately, it is clear that what petitioner wants is the land, but that is not what he is entitled to, nor was he ever entitled to it. Petitioner purchased the land at a foreclosure sale and it was, consequently, subject to a one-year period of redemption. As noted by the Montana Supreme Court in ***Lester v. J&S Investment Co.***, *supra*, in taking possession of the property at a foreclosure sale, "[T]he buyer is taking a calculated chance that the mortgagor will be unable to redeem and thus the buyer may have gained the property at a bargain price." ***Id.***, 557 P.2d at 301.

Here, while the petitioner gained an equitable interest for the period of one year at a "bargain price," the mortgagor and/or a junior mortgagee was able to redeem and, consequently, the "calculated chance" that petitioner took in purchasing the property was not successful. Here, though, petitioner cannot claim that the money that he paid for Tract II was not returned to him along with the appropriate statutorily-allowed interest.

Petitioner has been deprived of no property. He has been paid for the property which he attempted to obtain at a bargain price. There has been no taking of any property whatsoever, much less a wrongful taking or taking in violation of due process.

There was no effort on behalf of FmHA to redeem both tracts for the price of one. To the contrary, as petitioner well understood, FmHA redeemed Tract II and the person entitled to redeem Tract I did so at about the same time.

Petitioner's efforts to mislead this Court into believing that FmHA either was trying to redeem two tracts for the price of one or was not paying a sufficient amount of money for the redemption of Tract II are misguided. All parties knew and/or understood that the tracts were sold separately and were redeemed separately.

D. Any Failures to Comply with Statutory Mandates Are Technical Only

There is a great deal of argument in the lower court as to whether substantial compliance, or strict compliance, was required (with the redemption statutes). In his brief to this Court, petitioner cites and relies upon the case of ***Tech-Fluid Serv. v. Gavilan Operating***, 787 P.2d 1328 (Utah App. 1990). ***Tech-Fluid*** stands for a proposition other than that which was cited by petitioner in his brief to this Court. In ***Tech-Fluid***, the Utah appellate court noted that all that was needed was substantial compliance with the procedural aspects of the redemption statutes. In that case, the redemptioner tendered the correct amount of money within the redemption period, and tendered some proof of an assignment from the mortgagor of redemptioner's right to redeem. He also included a "Notice of Redemption" which provided additional facts. The Utah court noted that these requirements "are procedural in nature and do not affect substantive rights of the purchaser." ***Id.***, 787 P.2d at 1334.

The Washington court had an opportunity to discuss a situation factually similar to the one at bar. In ***GESA Federal Credit Union v. Mutual Life Ins. Co.***, 105 Wash.2d 248, 713 P.2d 728 (1986), the purchaser had failed to file a statement of payment of irrigation tax assessments with the county auditor. These payments totalled approximately $245,000. The purchaser was statutorily required

to provide actual notice of the cost of the redemption. The court held that even though the statement of irrigation tax payments was not provided, there had been substantial compliance with the appropriate statute. In so holding, the Washington court noted that some redemption statutes confer a statutory right of redemption, while others establish the procedure by which that right is perfected. These latter statutes are remedial in nature and to be liberally construed. If there is a technical procedural error or an error in the statutes establishing the procedure by which the right of redemption is perfected, a forfeiture requirement would not only be unjust but would also be inconsistent with the purpose of the statute because it does not affect substantive rights. As the Washington court noted, to allow such a result would be an exultation of form over substance.

Here, it cannot seriously be argued without torturing facts, logic and the truth, that the petitioner was given the amount of his sale price with the appropriate statutory interest. The tender of payment was made within the period of time allowed for redemption. Consequently, any deviation or failure to comply with the statutes regarding redemption is technical in nature and, consequently, harmless, as it did not affect a substantive right.

In ***Household Finance Corp. v. Bacon***, 58 Ore. App. 267, 648 P.2d 421 (1982), the Oregon court addressed the issue of failure to provide to the Sheriff the affidavit of an amount due and the

notice of intend to deem. Both items were statutorily required. Noting that the redemption statutes were remedial in nature and could be liberally construed, the court stated:

> Those provisions are for the benefit and protection of the Sheriff, who may refuse to allow the redemption if those requirements are not met. The Sheriff did not refuse and is not now complaining.

Id., 648 P.2d at 423.

Here, it is clear that Mont. Code Ann. § 25-13-801 establishes the right of redemption. The statutes following Mont. Code Ann. § 25-13-801 set forth the procedure for redemption and are, consequently, remedial in nature and to be liberally construed. The lower court was correct in adopting the substantial compliance test, and appropriately applied that test in the instant matter.

The petitioner alleges that CCSD failed to enforce the provisions of the statutes and, consequently, participated in the taking of property without due process of law. What the petitioner fails to recognize is that CCSD did not issue a deed until January of 1991, some 30 days after the time that the court issued its order regarding the writ of mandamus. In that order, CCSD was required by the court to issue the deed in favor of FmHA. After entry of that order, CCSD had no

alternative but to follow the valid December, 1990, court order.

In the lower courts, the CCSD argued judicial immunity as a result of its conduct pursuant to the December, 1990, order. There is no mention in petitioner's brief to this Court of that argument. However, the record below clearly reflects that CCSD is entitled to absolute judicial immunity as a result of its enforcing and implementing a valid court order. Parenthetically, the December, 1990, court order directing CCSD to issue the deed has remained unchallenged and has not been the subject of any appeal. Consequently, the order is final and ultimately controls the conduct of CCSD in issuing the deed to the appropriate party.

CONCLUSION

Petitioner has raised some novel arguments in his briefs, both in the lower courts and to this Court. However, it is imperative that CCSD point out that petitioner has been deprived of nothing. While he wanted the land and not the cash, as was recognized by his attorney in hearings before the lower courts, that is not a right to which he was entitled. He took a "calculated risk," hoping that he would obtain the property at a bargain price. He took the property subject to a one-year redemption, which meant that he could lose the property, any time within the one-year period, to either the debtor or another party entitled to redeem. That is the only thing that occurred here: the property was redeemed by a party entitled to

do so. The redemption was done within the period of time statutorily mandated, and Savoy received the appropriate amount of money. That should end the inquiry, and the petition for writ of certiorari should be denied.

DATED this 10th day of May, 1995.

UGRIN, ALEXANDER, ZADICK
& HIGGINS, P.C.

By: _____

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CERTIFICATE OF MAILING

I hereby certify that the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the United States mails at Great Falls, Montana, enclosed in a sealed envelope with first class postage prepaid thereon and addressed as follows:

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DATED this 10th day of May, 1995.

UGRIN, ALEXANDER, ZADICK
& HIGGINS, P.C.

APPENDIX

EXHIBIT A

Part 8
Redemption of Real Property

Part Cross-References
Docketing of judgment — lien, 25-9-301.
Rights of redemption applicable, 71-1-228.
Action to redeem mortgage, 71-1-230.
Redemption by multiple mortgagors, 71-1-231.
Liens generally, Title 71, ch. 3.

25-13-801. Who may redeem. (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

(a) the judgment debtor, the judgment debtor's spouse, or his successor in interest in the whole or any part of the property and, if the judgment debtor or successor be a corporation, a stockholder thereof;

(b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part thereof subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem.

(2) The persons mentioned in subsection (1)(b) of this section are, in this part, termed "redemptioners".

History: En. Sec. 230, p. 181, L. 1867; re-en. Sec. 280, p. 87, Cod. Stat. 1871; re-en. Sec. 330, p. 129, L. 1877; re-en. Sec. 330, 1st Div. Rev. Stat. 1879; re-en. Sec. 341, 1st Div. Comp. Stat. 1887; amd. Sec. 1234, C. Civ. Proc. 1895; re-en. Sec. 6837, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1913; re-en. Sec. 9442, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 701; amd. Sec. 1, Ch. 16, L. 1927; re-en. Sec. 9442, R.C.M. 1935; amd. Sec. 55, Ch. 535, L. 1975; R.C.M. 1947, 93-5834.

Cross-References
Docketing of judgment — lien, 25-9-301.
Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.
Prejudgment attachment, Title 27, ch. 18.

25-13-802. Time for redemption — amount to be paid. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of his purchase with interest at a rate established by the judgment in the action that led to the execution sale, up to the time of redemption;

(2) the amount of any assessment or taxes which the purchaser may have paid thereon after purchase and interest on such amount;

(3) the amount of any repairs, maintenance expenses, or other expenditures that the purchaser may reasonably have made after purchase for the maintenance of the property, with interest on the amounts from the date of expenditure; and

(4) if the purchaser is also a creditor having a prior lien to that of the redemptioner other than the judgment under which such purchase was made, the amount of such lien with interest.

History: En. Sec. 231, p. 181, L. 1867; re-en. Sec. 281, p. 88, Cod. Stat. 1871; amd. Sec. 331, p. 129, L. 1877; re-en. Sec. 331, 1st Div. Rev. Stat. 1879; re-en. Sec. 342, 1st Div. Comp. Stat. 1887; amd. Sec. 1235, C. Civ. Proc. 1895; re-en. Sec. 6838, Rev. C. 1907; re-en. Sec. 9443, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 702; re-en. Sec. 9443, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1937; R.C.M. 1947, 93-5835; amd. Sec. 1, Ch. 503, L. 1991.

Cross-References
"Year" defined, 1-1-301.

25-13-803. Subsequent redemptions — when permitted, amount paid. (1) If property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption with interest thereon at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him with like interest on such amount, and the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within 60 days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest.

(2) If the judgment debtor or the judgment debtor's spouse redeem, the judgment debtor or the spouse must make the same payments as are required to effect a redemption by a redemptioner.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part); amd. Sec. 2, Ch. 503, L. 1991.

25-13-804. Redemption by stockholder or corporation. (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for his benefit the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption and within 60 days after the expiration of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for his benefit a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate established by the judgment in the action that led to the execution sale, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon; and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed and shall succeed to

the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit setting forth the number of shares of stock owned by him and, to the best of his knowledge, the number of shares of stock of the corporation outstanding.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(3); amd. Sec. 3, Ch. 503, L. 1991.

25-13-805. Redemption by debtor from spouse. If the spouse of a judgment debtor redeem, the judgment debtor, within 1 year after the date of sale, may redeem by paying the spouse or the spouse's successors in interest or the sheriff for the benefit of the spouse or the successors in interest of the spouse the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the spouse or the successors in interest of the spouse, with like interest thereon.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(4); amd. Sec. 4, Ch. 503, L. 1991.

25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk, and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References

Liability of clerk relating to duties as recorder, 7-4-2623.

Fees of County Clerk, 7-4-2631.

25-13-807. Papers redemptioner must produce. A redemptioner must produce, to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

(1) a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the county clerk; or if

upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

(3) an affidavit by himself or his agent showing the amount then actually due upon the lien.

History: En. Sec. 234, p. 182, L. 1867; re-en. Sec. 284, p. 88, Cod. Stat. 1871; re-en. Sec. 334, p. 131, L. 1877; re-en. Sec. 334, 1st Div. Rev. Stat. 1879; re-en. Sec. 345, 1st Div. Comp. Stat. 1887; amd. Sec. 1238, C. Civ. Proc. 1895; re-en. Sec. 6841, Rev. C. 1907; re-en. Sec. 9446, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 705; re-en. Sec. 9446, R.C.M. 1935; R.C.M. 1947, 93-5838.

Cross-References

Search of records, 7-4-2621.

25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale or, in case his term of office has expired, to his successor in office.

History: En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part).

25-13-809. Effect of redemption by debtor or debtor's spouse — certificate of redemption. (1) If the debtor redeem, the effect of the sale is terminated and the debtor is restored to his own estate. If the spouse redeem, such spouse shall become the owner of the debtor spouse's interest, subject to any liens thereon at the time of the execution sale.

(2) Upon a redemption by a debtor or the debtor's spouse, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References

Power of judicial officers to take acknowledgments, 3-1-404.

25-13-810. When purchaser entitled to conveyance. If no redemption be made within 1 year after the sale, the purchaser or his assignee is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed and no other redemption has been made and notice thereof given and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of 1 year from the date of the sale to redeem the property.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References
"Year" defined, 1-1-301.

25-13-811. Who to execute conveyance. In all cases when, under the provisions of this chapter, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale if he still be in office, but if the case the officer who made such sale is not in office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

History: En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part).

25-13-812 through 25-13-820 reserved.

25-13-821. Possession of lands during redemption period. The purchaser of lands at execution sales is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while said execution debtor personally occupies the land as a home for himself and his family. The intention hereof being to insure to such debtor the possession of his land during the year of redemption.

History: En. Sec. 1, Ch. 230, L. 1921; re-en. Sec. 9449, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1933; re-en. Sec. 9449, R.C.M. 1935; R.C.M. 1947, 93-5841(part).

25-13-822. Rents and profits during redemption period, accounting. (1) The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, are entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser or his or their assigns from the property thus sold preceding such redemption, the amount of such rents and profits shall be a credit upon the redemption money to be paid. Any payments made under 25-13-802(2) and (3) must be subtracted from the credit for rents and profits.

(2) If the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor or his assigns a written and verified statement of the amount of such rents and profits thus received, the period for redemption is extended 5 days after such sworn statement is given by such purchaser or his assigns to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of 1 month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting and disclosure of such rents and profits, and until 15 days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

History: En. Sec. 236, p. 183, L. 1867; rep. Sec. 751, p. 187, Cod. Stat. 1871; en. Sec. 1240, C. Civ. Proc. 1895; re-en. Sec. 6843, Rev. C. 1907; re-en. Sec. 9448, R.C.M. 1921; Cal. C. Civ. Proc. 707; re-en. Sec. 9448, R.C.M. 1935; R.C.M. 1947, 93-5840; amd. Sec. 5, Ch. 503, L. 1991.

25-13-823. Restraint of waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale or entitled to possession afterward, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, to use it in the ordinary course of husbandry, to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor or for the repair of fences or for fuel for his family while he occupies the property.

History: En. Sec. 235, p. 182, L. 1867; re-en. Sec. 285, p. 89, Cod. Stat. 1871; re-en. Sec. 335, p. 131, L. 1877; re-en. Sec. 335, 1st Div. Rev. Stat. 1879; re-en. Sec. 346, 1st Div. Comp. Stat. 1887; re-en. Sec. 1239, C. Civ. Proc. 1895; re-en. Sec. 6842, Rev. C. 1907; re-en. Sec. 9447, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 706; re-en. Sec. 9447, R.C.M. 1935; R.C.M. 1947, 93-5839.

Cross-References

When defendant may be arrested, 27-16-102.

Injunctions, Title 27, ch. 19.

General duty of care, 28-1-201.

Waste prohibited, 71-1-106.

Injunction to prevent injury to property, 71-1-227.

25-13-824. Enjoining injury to property after sale and before conveyance. The court or judge may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property after a sale on execution, before a conveyance.

History: En. Sec. 240, p. 93, Bannack Stat.; re-en. Sec. 261, p. 188, L. 1867; re-en. Sec. 310, p. 95, Cod. Stat. 1871; re-en. Sec. 360, p. 139, L. 1877; re-en. Sec. 360, 1st Div. Rev. Stat. 1879; re-en. Sec. 372, 1st Div. Comp. Stat. 1887; re-en. Sec. 1318, C. Civ. Proc. 1895; re-en. Sec. 6878, Rev. C. 1907; re-en. Sec. 9496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 745; re-en. Sec. 9496, R.C.M. 1935; R.C.M. 1947, 93-6220(part).

Cross-References

When defendant may be arrested, 27-16-102.

Injunctions, Title 27, ch. 19.

General duty of care, 28-1-201.

Waste prohibited, 71-1-106.

Injunction to prevent injury to property, 71-1-227.

25-13-825. Damages for injury to property after sale and before conveyance. When real property has been sold on execution, the purchaser thereof or any person who may have succeeded to his interest may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance.

History: En. Sec. 262, p. 188, L. 1867; re-en. Sec. 311, p. 95, L. 1871; re-en. Sec. 361, p. 139, L. 1877; re-en. Sec. 361, 1st Div. Rev. Stat. 1879; re-en. Sec. 373, 1st Div. Comp. Stat. 1887; re-en. Sec. 1319, C. Civ. Proc. 1895; re-en. Sec. 6879, Rev. C. 1907; re-en. Sec. 9497, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 746; re-en. Sec. 9497, R.C.M. 1935; R.C.M. 1947, 93-6221.

Cross-References

Injury to property defined, 27-1-106.

Damages generally, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

APPENDIX

EXHIBIT B

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

WALTER H. SAVOY, Plaintiff,	:	
vs.	:	NO. BDV-90-769
CASCADE COUNTY SHERIFF'S DEPARTMENT; and UNITED STATES OF AMERICA, by and through the Farmers Home Administration, its agency, Defendants.	:	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On December 4, 1990, Plaintiff's Petition for Writ of Mandamus came on for hearing. Plaintiff was present and represented by Gary Deschenes, Defendant, United States of America, was present and represented by George Darragh, and Defendant, Cascade County Sheriff's Department, was present and represented by Nancy P. Cory. Oral testimony was heard and counsel presented various authorities to the Court for its consideration. Based upon the testimony, arguments of counsel, and all pleadings on file herein, and the Court being fully informed, the Court makes the following:

FINDINGS OF FACT

I.

On or about February 28, 1989, a judgment and decree of foreclosure were entered in the case of Interstate Production Credit Ass'n, Plaintiff vs. Hugh Sands, et al., Defendants, Cause

No. BDV-86-991, in the Montana Eighth Judicial District Court, Cascade County. Pursuant to this judgment and decree of foreclosure, an order of sale was issued commanding the Cascade County Sheriff to sell the real property described in the judgment and decree.

II.

On or about May 23, 1989, a Sheriff's sale was held and Plaintiff, Walter Savoy, purchased the property known as "Tract II", which property was located in Cascade County, Montana, and the property description of which was contained in the judgment and decree of foreclosure, as well as the order of sale.

III.

On May 17, 1990, the Farmers Home Administration submitted to the Cascade County Sheriff's Department notice of its intention to redeem the subject property known as Tract II. The notice of intention to redeem was in the form of a letter directed to Barry Michelotti, Sheriff, of the Cascade County Sheriff's Department. Along with that letter, the Farmers Home Administration presented a certified copy of the judgment decree to evidence its right to redeem. Also enclosed with the May 17, 1990 notice of intention to redeem was U.S. Treasury check #308423611912 in the amount of $90,030.14. This amount of money represented the purchase price paid by Plaintiff, with interest at six percent (6%) per annum for 360 days, as statutorily mandated.

IV.

On or about the same date, the Farmers Home Administration submitted to the Sheriff of Cascade County a notice of redemption.

V.

At or about the same time Tract II was being redeemed by the Farmers Home Administration, Tract I was also being redeemed by an assignee or successor in interest of the debtor.

VI.

On or about May 17, 1990, the Cascade County Sheriff's Department prepared and recorded a Sheriff's Certificate of Payment Price of Real Property under Decree of Foreclosure. This document recited that the Farmers Home Administration, an agency of the United States of America, had tendered and paid the amount of $90,030.14, which amount represented the purchase price, together with interest, by the purchaser, Plaintiff, Walter Savoy.

VII.

On or about May 17, 1990, the date the Farmers Home Administration provided the Cascade County Sheriff with notice of its intention to redeem the property, the same notice was given to Plaintiff by the Farmers Home Administration. That notice stated that the property being redeemed by the Farmers Home Administration was Tract II, the property Plaintiff had purchased for $85,000.00. The May 17, 1990 notice to Plaintiff reflects that the notice of redemption was also sent with that letter.

VIII.

The notice of redemption provided to the Cascade County Sheriff's Department by the Farmers Home Administration was not recorded at the Cascade County Clerk and Recorder's Department.

IX.

Not until June 8, 1990, did Plaintiff, through his counsel, notify the Cascade County Sheriff's Department that he was contending that the redemption notice of the Farmers Home Administration was defective. That letter, directed to the Cascade County Sheriff's Department by counsel for Plaintiff, indicated an intention to contest the redemptions of both Tract I and Tract II. The June 8, 1990 letter authored by Gary Deschenes did not set forth the nature of Plaintiff's objections to the notice of redemption, but alleged only that it was in violation of Section 25-13-807, M.C.A.

X.

Plaintiff filed a petition for Writ of Mandamus, claiming that he has no other plain, speedy and adequate remedy. There are rental homes on the property for which Mr. Savoy is not collecting rent, and there is a hay crop and pasture upon the property which is in dispute.

BASED upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

The United States of America, by and through its agent, Farmers Home Administration, was a party entitled to redeem the property on May 17, 1990, under and pursuant to Montana statutes, by virtue of a mortgage held by the Farmers Home Administration.

II.

The Cascade County Sheriff's Department is statutorily required to accept papers and documents relative to the redemption process, and to prepare and execute a Sheriff's Deed at the conclusion of the redemption period.

III.

In this case, the Cascade County Sheriff's Department received a certified copy of the judgment and decree of foreclosure. In that judgment and decree, the mortgage held by the Farmers Home Administration relative to Tract II was set forth with sufficient clarity and was identified appropriately by date and recording information.

IV.

The Cascade County Sheriff's Department did not receive an affidavit of an amount actually due upon the mortgage from the Farmers Home Administration on May 17, 1990. This information does not affect Farmers Home Administration's ability to redeem or propriety as a redeeming party, but is relevant only if a subsequent redemption were attempted.

V.

The notice provided by Walter Savoy, by and through his counsel of record, of his objection to the notice of redemption came after the redemption period expired. The notice of redemption was presented six days prior to the expiration of the redemption period.

VI.

The Cascade County Sheriff's Department performed all duties and responsibilities statutorily required of it in a reasonable, diligent and prudent manner.

VII.

When demand was made by Farmers Home Administration upon the Cascade County Sheriff's Department for issuance of a Sheriff's Deed, the Cascade County Sheriff's Department also had a demand from the Plaintiff to execute a Sheriff's Deed to him. The Cascade County Sheriff's Department has no discretion as to which party should be issued the deed.

VIII.

The equities of this matter are not such as to justify an award of attorney fees to the Plaintiff.

IX.

Plaintiff's damages, if any, were not incurred as a result of any act or omission on the part of the Cascade County Sheriff's Department. Attorney fees incurred by Plaintiff in prosecuting this litigation were not incurred as a result of any act or omission of the Cascade County Sheriff's Department.

BASED upon the foregoing Findings of Fact and Conclusions of Law, the Court enters the following:

ORDER

1. That the Petition for Writ of Mandamus is hereby denied.

2. That Plaintiff be awarded no damages or attorney fees as against the Cascade County Sheriff's Department.

3. That the notice of redemption provided by Farmers Home Administration to the Cascade County Sheriff's Department was not fatally defective, but substantially complied with the redemption statutes, so as to allow the Cascade County Sheriff's Department to proceed with its obligations pursuant to Montana's redemption statutes.

4. The United States of America has substantially complied with the requirements of the statutes concerning the documents required in which to perfect their right of redemption. Plaintiff has made no showing of prejudice and he has received everything he is entitled to receive under the applicable statutes. Plaintiff by accepting the tender of the United States of America's check and having failed to state his objections to the attempted redemption has waived these objections.

5. Plaintiff's application for a Writ of Mandamus being equitable in nature, having failed to show any prejudice, the United States of America having substantially complied with the statutes, IT IS HEREBY ORDERED that the Plaintiff's Writ and application for mandamus is denied.

6. The record showing that no other party has attempted to redeem the property, 60 days having elapsed from the time the United States attempted to redeem the property on May 17, 1990, IT IS HEREBY ORDERED that the Sheriff of Cascade County shall issue a

deed to the Farmers Home Administration to the property described as Tract II.

DATED this 20th day of December, 1990.

DISTRICT JUDGE

cc: Gary Deschenes
George Darragh
Nancy P. Cory

APPENDIX

EXHIBIT C

FILED
DEC 16 1993
NANCY MORTON
Court Clerk
DEPUTY

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

WALTER H. SAVOY, Plaintiff, -vs- CASCADE COUNTY SHERIFF'S DEPARTMENT; and UNITED STATES OF AMERICA, by and through the Farmers Home Administration, its agency, Defendants.	)	No. BDV-90-769

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On November 29, 1993, a hearing was held by the Court on all parties' motions for summary judgment. The plaintiff was present and represented by Gary Deschenes. Defendant United States of America was represented by George Darragh and Defendant Cascade County Sheriff's Department was represented by Nancy P. Cory. The Court noted all parties had filed motions for summary judgment and oral testimony was heard and counsel presented various authorities to the Court for its consideration in determining the various motions for summary judgment. Based upon the briefs presented to the Court, arguments of counsel, all pleadings on file here

including all discovery recently filed with the Court and the Court being fully informed, the Court makes the following:

FINDINGS OF FACT

I.

On or about February 28, 1989, a judgment and decree of foreclosure were entered in the case of ***Interstate Production Credit Ass'n, Plaintiff vs. Hugh Sands, et al., Defendants***, Cause No. BDV-86-991, in the Montana Eighth Judicial District Court, Cascade County. Pursuant to this judgment and decree of foreclosure, an order of sale was issued commanding the Cascade County Sheriff to sell the real property described in the judgment and decree by tracts.

II.

On or about May 23, 1989, a Sheriff's sale was held and Plaintiff, Walter Savoy, purchased the property known as "Tract I" for $3001.00 and "Tract II" for $85,000.00, which property was located in Cascade County, Montana, and the property description of each tract was separately set forth in the judgment and decree of foreclosure, as well as the order of sale.

III.

On May 17, 1990, the Farmers Home Administration submitted to the Cascade County Sheriff's Department notice of its intention to redeem the subject property known as "Tract II". The notice of intention to redeem was in the form of a letter directed to Barry Michelotti, Sheriff, of the Cascade County Sheriff's Department. The Farmers Home Administration also presented with that letter a certified copy of the judgment decree above-described to evidence

its right to redeem. Also enclosed with the May 17, 1990 notice of intention to redeem was U.S. Treasury check #108423611912 in the amount of $90,030.14. This amount of money represented the purchase price paid by Plaintiff for Tract II with interest at six percent (6%) per annum for 360 days, as statutorily mandated.

IV.

On or about the same date, the Farmers Home Administration submitted to the Cascade County Sheriff's Department a notice of redemption.

V.

At or about the same time Tract II was being redeemed by the Farmers Home Administration, Tract I was also being redeemed from plaintiff by an assignee or successor in interest of the debtor. Plaintiff received a check in the appropriate amount from the redemptioner for "Tract I." No legal challenge has been initiated as to the redemption of "Tract I" and there were no subsequent redemptions.

VI.

On or about May 17, 1990, the Cascade County Sheriff's Department prepared and recorded a Sheriff's Certificate of Payment Price of Real Property under Decree of Foreclosure. This document recited that the Farmers Home Administration, an agency of the United States of America, had tendered and paid the amount of $90,030.14, which amount represented the purchase price of "Tract II," together with interest, by the purchaser, Plaintiff, Walter Savoy.

VII.

On or about May 17, 1990, the date the Farmers Home Administration provided the Cascade County Sheriff with notice of its intention to redeem the property, the same notice was given to Plaintiff by the Farmers Home Administration. That notice stated that the property being redeemed by the Farmers Home Administration was Tract II, the property Plaintiff had purchased for $85,000.00. The May 17, 1990 notice to Plaintiff reflects that the notice of redemption was also sent with that letter.

VIII.

The notice of redemption provided to the Cascade County Sheriff's Department by the Farmers Home Administration was not recorded at the Cascade County Clerk and Recorder's Department.

IX.

Sometime after May 17, 1990, but before June 8, 1990, plaintiff contacted Cascade County Sheriff's Office and had a meeting with Deputy Sheriffs John Strandell and Richard Duncan. During this meeting, plaintiff was informed of the redemption, but was told that the Cascade County Sheriff's Department could not provide legal advice.

X.

On June 8, 1990, the plaintiff, through his counsel, notified the Cascade County Sheriff's Department generally that he was contending that the redemption notice the Farmers Home Administration was defective. The June 8, 1990 letter authored by Gary Deschenes, counsel for plaintiff, indicated plaintiff's intention to protest both redemption of Tract I and Tract II but

did not set forth the nature of the plaintiff's objections to the notice of redemption. The letter only generally alleged that both of the redemptions were in violation of §25-13-807, M.C.A.

XI.

Plaintiff filed a petition for Writ of Mandamus, Complaint for Declaratory Judgment, and alleged violation of constitutional rights for taking of property without due process of law, naming the Cascade County Sheriff's Department and Farmers Home Administration as defendants.

XII.

On or about December 5, 1990, the Court heard plaintiff's petition for Writ of Mandamus. The plaintiff testified at the hearing as did Susan Hensleigh from Farmers Home Administration. Subsequent to that hearing, and or about December 20, 1990, the Court entered comprehensive Findings of Fact, Conclusions of law and Order denying plaintiff's petition for Writ of Mandamus.

XIII.

Subsequent to the December, 1990 order above-referred to, the parties proceeded with various discovery including depositions of three Sheriff's deputies, John Strandell, Richard Duncan, and James Burnes, and the Sheriff of Cascade County. Plaintiff also deposed employees of Farmers Home Administration who were involved with the redemption of "Tract II". Nothing in these depositions which have been reviewed by the Court revealed any conflict with the underlying facts as set forth in this Court's order concerning plaintiff's petition for Writ of Mandamus entered in December of 1990.

XIV.

The only contact by any members of the Cascade County Sheriff's office with plaintiff prior to the June 8th correspondence from Deschenes and other than at the judicial sale in May of 1989 occurred after the redemption was affected by Farmers Home Administration. The only contacts then between plaintiff and the Cascade County Sheriff's Department were in an effort to provide to plaintiff the U.S. Treasury check submitted by Farmers Home Administration. During none of the contacts between Cascade County Sheriff's Department and plaintiff were there any indications that the Sheriff's Department did anything other than attempt to appropriately provide to plaintiff the proceeds of the redemption from Farmers Home Administration.

XV.

Following the December, 1990 hearing the Court directed the Cascade County Sheriff's Department to issue the Sheriff's deed to Farmers Home Administration. The Sheriff of Cascade County issued the Sheriff's deed pursuant to this order.

XVI.

Counsel for plaintiff herein represented one of the parties in the underlying foreclosure action and in that capacity had received in June of 1989 an affidavit from an employee of Farmers Home Administration showing that the unpaid interest and principal owing to Farmers Home Administration under its mortgage in relation to "Tract II" was in excess of $400,000.00.

BASED upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

The United States of America, by and through its agent, Farmers Home Administration, was a party entitled to redeem the property on May 17, 1990, under and pursuant to Montana statutes, by virtue of a mortgage held by the Farmers Home Administration.

II.

The Cascade County Sheriff's Department is statutorily required to accept papers and documents relative to the redemption process, and to prepare and execute a Sheriff's Deed at the conclusion of the redemption period. The Sheriff was obligated, pursuant to the Court's Order dated December 20, 1990, to issue the Sheriff's deed to Farmers Home Administration.

III.

Here, the Cascade County Sheriff's Department received a certified copy of the judgment and decree of foreclosure with the notice of intention of Farmers Home Administration to redeem. In that judgment decree, the mortgage held by the Farmers Home Administration relative to Tract II was set forth with sufficient clarity and was identified appropriately by date and recording information. The information provided in the judgment decree was sufficient to allow any person to appropriately search the records and obtain information relative to the mortgage. The documents submitted by Farmers Home Administration provided the sheriff with adequate evidence of its right to redeem.

IV.

Cascade County Sheriff's Department did not receive an affidavit of an amount due upon the mortgage from the Farmers Home Administration on May 17, 1990, and at no time thereafter. This affidavit does not affect Farmers Home Administration's ability to redeem or propriety as a redeeming party, but is relevant only if a subsequent redemption were attempted. Plaintiff had actual knowledge of Farmers Home Administration redemption. If a subsequent redemption were attempted, there was sufficient information in the judgment and decree that accompanied the notice of intention to redeem to allow any inquisitive party to obtain the information that would be in an affidavit of amount due.

V.

The notice of redemption was presented six days prior to the expiration of the redemption period. The notice provided by plaintiff, by and through his counsel of record, of his objection to the notice of redemption came after the redemption period expired. Further, the notice of objection was vague, ambiguous and set forth no specific grounds of objection. There is no evidence that prior to the redemption period expiring plaintiff made any effort to determine the amount actually due and owing to Farmers Home Administration upon its mortgage. It is plainly apparent that plaintiff's objections demonstrate a preconceived desire to refuse to accept tender. If plaintiff had pointed out his objections Farmers Home Administration would have had time to remedy technical deficiencies. If one fails to state his objections to a tender, he is deemed to have waived them.

VI.

Redemption statutes are remedial in nature and are to be liberally construed. In the absence of prejudice to the other parties, substantial compliance with the redemption statutes is sufficient to effect a redemption. Plaintiff received the full amount he was entitled to by the redemption. Plaintiff took no action to effect a subsequent redemption, if he was a party entitled to, and therefore has failed to show any prejudice.

VII.

Upon redemption, the redemptioner is subrogated to the rights of the purchaser at the Sheriff sale which rights included the right to demand and receive a sheriff's deed to the premises if no further redemption was had within 60 days. The redemption transfers to the redemptioner all the right, title, and interest acquired by the purchaser. Title vests upon receiving the sheriff's deed to the premises which includes title free from encumbrances.

VIII.

The Cascade County Sheriff's Department performed all of its statutory duties and responsibilities in a reasonable, diligent and prudent manner.

IX.

When demand was made by Farmers Home Administration upon the Cascade County Sheriff's Department for issuance of a Sheriff's Deed, the Cascade County Sheriff's Department also had a demand from the plaintiff to execute a Sheriff's Deed to him. The Cascade County Sheriff's Department did nothing until ordered by this Court

in December of 1990 to issue the deed to Farmers Home Administration. When receipt of that order was obtained, the Cascade County Sheriff's Department appropriately issued its Sheriff's Deed to Farmers Home Administration as ordered to do so by this Court.

X.

Prior to the December, 1990 order of this Court requiring the Cascade County Sheriff's Departments to issue the deed to Farmers Home Administration, Cascade County Sheriff's Department had no obligation to issue the deed to Plaintiff Walter Savoy.

XI.

The Cascade County Sheriff's Department appropriately waited for the outcome of the Petition for Writ of Mandamus in order to determine which party was entitled to the Sheriff's Deed.

XII.

Because Farmers Home Administration was a party entitled to redeem and provided sufficient basis for any person to obtain information concerning the amount due upon the mortgage held by Farmers Home, plaintiff has not suffered any damages by Farmers Home's failure to provide the affidavit showing the amount due and owing.

XIII.

Plaintiff was not damaged in any way as a result of any act or omission on the party of Cascade County Sheriff's Department or the Farmers Home Administration.

BASED upon the foregoing Findings of Fact and Conclusions of Law,the Court enters the following:

ORDER

1. There are no material and relevant facts at issue herein and summary judgment is appropriate.

2. Based upon the undisputed material facts as presented to the Court, the Cascade County Sheriff's Department Motion for Summary Judgment is well taken and should be granted in its entirety.

3. That the Motion for Summary Judgment filed by United States of America, by and through Farmers Home Administration, is well taken and should be granted in its entirety.

4. That plaintiff's Motion for Summary Judgment against Cascade County Sheriff's Department is hereby denied.

5. That plaintiff's Motion for Summary Judgment against the United States of America, by and through the Farmers Home Administration, is hereby denied.

IT IS HEREBY ORDERED that the Motion for Summary Judgment filed by Cascade County Sheriff's Department shall be granted and the Motion for Summary Judgment filed by United States of America, by and through the Farmers Home Administration, be granted in their entirety.

DATED this 16 day of December, 1993.

District Court Judge

cc: Gary Deschenes
George Darragh
Nancy P. Cory

APPENDIX

EXHIBIT D

IN THE SUPREME COURT

OF THE STATE OF MONTANA

WALTER H. SAVOY,

PLAINTIFF AND APPELLANT,

-VS-

CASCADE COUNTY SHERIFF'S DEPARTMENT AND UNITED STATES OF AMERICA, BY AND THROUGH THE FARMER'S HOME ADMINISTRATATION, its agency,

DEFENDANTS AND RESPONDENTS.

TRANSCRIPT ON APPEAL

APPEARANCES:

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both parcels of land as Farmer's Home tried to redeem, but more importantly he didn't just bargain for that money plus the half percent interest per month that the statute allows, what he bargained for was the land. That's what he's prejudiced by, that's what he didn't get, and that's why we have been here today.

This case has taken so long. Mr. Savoy is very concerned about the land, that's what he wants, not the cash.

Farmer's Home Administration, after being told to follow the statutes, didn't, and if you don't follow the law, don't follow the steps, substantial compliance doesn't come into effect at all, because you have to start compliance.

My briefs go into the various cases, aside from Dupnik, basically I believe they all point out they all support Mr. Savoy's position. I don't know if you want me to go into those. I don't think there is a real argument. They speak clearly for themselves. Montana cases that will talk about strict compliance in Montana, those are what I would like to take a look at.

In particular, out of the nine briefs, Your Honor, I am sorry for the delay, there is a couple

C E R T I F I C A T E

STATE OF MONTANA)
: ss
County of Cascade)

I, CONNIE J. HEIMAN, do hereby certify that: I am a duly appointed, qualified and acting Official Court Reporter of the Eighth Judicial District of the State of Montana; that I reported all of the foregoing proceedings had in the above-entitled action, and the foregoing transcript contains a full, true and correct transcript of the said proceedings as transcribed.

IN WITNESS WHEREOF, I have hereunto set our hand on this _____day of _____ 1994.

_____

CONNIE J. HEIMAN
REGISTERED PROFESSIONAL REPORTER